



Jersey

**COLLECTIVE INVESTMENT FUNDS  
(JERSEY) LAW 1988**

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Jersey

## COLLECTIVE INVESTMENT FUNDS (JERSEY) LAW 1988

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Jersey

## COLLECTIVE INVESTMENT FUNDS (JERSEY) LAW 1988<sup>1</sup>

A LAW to prohibit unauthorized persons from being functionaries of collective investment funds; to regulate such functionaries and funds; and for connected purposes

Commencement [[see endnotes](#)]

### 1 Interpretation

(1) In this Law, unless the context otherwise requires –

“associate”, in relation to a person, means –

- (a) the person’s husband, wife, civil partner, child or stepchild;
- (b) the person’s partner;
- (c) any company of which the person is a director;
- (d) where the person is a company, any director or employee of the company, any company in the same group as the company, and any director or employee of such a company; and
- (e) any person with whom the first mentioned person has an agreement, arrangement or other obligation –
  - (i) to act together in exercising voting power,
  - (ii) with respect to the acquisition, holding or disposal of shares or other interests in a body corporate, partnership or other association;

“certificate”, except in Article 11, means a certificate granted under Article 8B;

“certificate holder” means a company, trustee, or general partner, to whom a certificate has been granted in relation to a fund;

“certified fund” means a fund in relation to which a certificate that is in force has been granted under Article 8B;

“code of practice” means a code prepared and from time to time revised pursuant to Article 15(1);

“collective investment fund” has the meaning given in Article 3;

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998;

“company” means a body corporate wherever incorporated;

“compliance officer” means a person so designated for the purposes of this Law by a holder of a permit or certificate holder and having the function of monitoring whether the law of Jersey, and any code of practice under this Law, are being complied with in the conduct of the business of the holder of the permit or the certificate holder;

“Court” means the Royal Court;

“documents” includes accounts, deeds, writings and information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;

“ESAs” means the European Supervisory Authorities comprising –

- (a) the European Banking Authority established by Regulation (EU) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.12)<sup>3</sup>;
- (b) the European Insurance and Occupational Pensions Authority established by Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.48)<sup>4</sup>; and
- (c) the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.84)<sup>5</sup>;

“ESRB” means the European Systemic Risk Board established by Regulation (EU) No. 1092/2010 of the European Parliament and of the Council of 24 November 2010 (O.J. No. L 331, 15.12.2010, p.1)<sup>6</sup>;

“functionary” means a person who is a functionary in accordance with Article 4 in relation to a recognized fund;

“fund service provider” means a person who carries on fund services business within the meaning of the Financial Services (Jersey) Law 1998;

“fund service provider in relation to a certified fund” means a person who carries on, in relation to a certified fund, fund services business within the meaning of the Financial Services (Jersey) Law 1998;

“fund service provider in relation to an unclassified fund” means a person who carries on, in relation to an unclassified fund, fund services business within the meaning of the Financial Services (Jersey) Law 1998;

“holding company” has the meaning given in Article 2 of the Companies (Jersey) Law 1991<sup>8</sup>;

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“key person” means a person employed or otherwise engaged in relation to a collective investment fund as an officer of any one or more of the following classes in relation to the conduct of the fund –

- (a) compliance officer;
- (b) money laundering compliance officer;
- (c) money laundering reporting officer;

“Minister” means the Chief Minister;

“money laundering compliance officer” means a person appointed as “compliance officer” under the Money Laundering (Jersey) Order 2008<sup>9</sup>;

“money laundering reporting officer” means a person appointed as “reporting officer” under the Money Laundering (Jersey) Order 2008;

“partnership” includes a partnership constituted under the law of a country or territory outside Jersey;

“permit” means a permit granted under this Law;

“prescribed” means prescribed by an Order made by the Minister on the recommendation of the Commission;

“principal person” –

- (a) in relation to a sole trader, subject to sub-paragraph (f), means the proprietor;
- (b) in relation to a company, subject to sub-paragraph (f), means –
  - (i) a person who, either alone or with any associate or associates –
    - (A) directly or indirectly holds 10% or more of the share capital issued by the company,
    - (B) is entitled to exercise or control the exercise of not less than 10% of the voting power in general meeting of the company or of any other company of which it is a subsidiary, or
    - (C) has a holding in the company directly or indirectly which makes it possible to exercise significant influence over the management of the company;
  - (ii) a director or equivalent, by whatever name called,
  - (iii) a person in accordance with whose directions, whether given directly or indirectly, any director of the company, or director of any company of which the company is a subsidiary, is accustomed to act (but disregarding advice given in a professional capacity);
- (c) in relation to a partnership, subject to sub-paragraph (f)(ii), means –
  - (i) a partner,
  - (ii) where a partner is a company, any person who, in relation to that company, falls within sub-paragraph (b);

- (d) in relation to a person whose registered office and principal place of business are outside Jersey, subject to sub-paragraph (f), includes a person who, either alone or jointly with one or more other persons, is responsible for the conduct of the person's business in Jersey;
- (e) in relation to a person who has become bankrupt, subject to sub-paragraph (f), includes a person who has been appointed as liquidator or administrator of the person's affairs;
- (f) does not include any person (person A) who –
  - (i) would be a principal person in relation to a company where –
    - (A) that company is described in Article 8(1)(a), and
    - (B) person A would be principal person in relation to that company under sub-paragraph (b)(i),
  - (ii) would be a principal person in relation to a person described in Article 8(1)(b) or (c) under any of sub-paragraphs (a) to (e), or
  - (iii) would be a principal person in relation to a company where –
    - (A) that company is a functionary described in Group 1, Part 2 of the Schedule, and
    - (B) person A would be principal person in relation to that company under sub-paragraph (b)(i);

“prospectus” means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription, sale or exchange any units; and also means any document or advertisement issued by or on behalf of a functionary presenting to the public a description of, or other information about, a collective investment fund;

“public statement” means a statement issued under Article 17;

“recognized fund” means a collective investment fund in relation to which there is a recognized fund certificate granted under the Collective Investment Funds (Recognized Funds) (General Provisions (Jersey) Order 1988<sup>10</sup> or the Collective Investment Funds (Recognized Funds) (Rules) (Jersey) Order 2003<sup>11</sup>;

“register” includes a register of issued bearer share certificates or issued bearer unit certificates;

“relevant supervisory authority”, in relation to a country or territory outside Jersey, means an authority discharging in that country or territory any function that is the same as, or similar to, a function of the Commission;

“Schedule” means the Schedule to this Law;

“shareholder controller” has the meaning given by sub-paragraph (b)(i) in the definition of ‘principal person’ but does not include any person who, by virtue of sub-paragraph (f) in that definition, is not a principal person;



“subsidiary” has the meaning given in Article 2 of the Companies (Jersey) Law 1991;

“supervisor of a securities market” has the meaning given in Article 1(1) of the Financial Services (Jersey) Law 1998<sup>12</sup>;

“unclassified fund” means a fund that is not a recognized fund;

“unit” means any material representation of the rights of participants with regard to the assets of a collective investment fund whether such rights are represented –

- (a) by securities issued by the collective investment fund;
- (b) by the entry of names of participants in a register kept in relation to the collective investment fund; or
- (c) by any other means;

“vary” includes amend, replace and revoke.<sup>13</sup>

- (2) The States may by Regulations amend paragraph (1) or Article 3.<sup>14</sup>
- (3) The States may by Regulations exclude or modify the effect of Regulations made under paragraph (2) on any enactment (which may include this Law) that is expressed to have effect in relation to a collective investment fund.<sup>15</sup>

## **2 Functions of the Commission<sup>16</sup>**

The Commission shall have the powers conferred on it by this Law and the duty generally to supervise the persons granted permits or certificates by it in the exercise of those powers.

## **3 Collective investment fund**

- (1) For the purposes of this Law any scheme or arrangement for the investment of money is a collective investment fund if –
  - (a) it has as its object or one of its objects the collective investment of capital acquired by means of an offer to the public of units for subscription, sale or exchange; and
  - (b) the circumstances referred to in any sub-paragraph of paragraph (2) apply to the fund.
- (2) The circumstances to which reference is made in paragraph (1)(b) are as follows –
  - (a) units are or are to be bought back or redeemed continuously or in blocks at short intervals upon the request of the holder and out of the assets of the fund;
  - (b) units are or have been or will be issued continuously or in blocks at short intervals; or
  - (c) the fund operates on the principle of risk spreading.<sup>17</sup>
- (3) For the purposes of this Law –

- (a) an offer for subscription, sale or exchange of units constitutes an offer to the public where the offer is not addressed exclusively to a restricted circle of persons; and
- (b) an offer shall not be considered to be addressed to a restricted circle of persons unless –
  - (i) the offer is addressed to an identifiable category of persons to whom it is directly communicated by the offeror or the offeror's appointed agent,
  - (ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the offer,
  - (iii) the number of persons in Jersey or elsewhere to whom the offer is so communicated does not exceed 50, and
  - (iv) the units which are the subject of the offer are not to be listed on any stock exchange within one year of the offer being made.<sup>18</sup>
- (4) For the purposes of this Law –
  - (a) a company which anywhere carries on long term insurance business of any class specified in Part 1 of Schedule 1 to the Insurance Business (Jersey) Law 1996<sup>19</sup> (except Class 5 or Class 7) is deemed to be a company issuing units of a collective investment fund; and
  - (b) the contracts of any description in that Part (other than those referred to in Class 5 and Class 7) are deemed to be units of a collective investment fund, if money received from the public through the effecting of such contracts is not received exclusively from a restricted circle of persons and such contracts shall in the aggregate be deemed to be a collective investment fund.<sup>20</sup>
- (5) For the purposes of paragraph (4) –
  - (a) money shall not be considered to be received exclusively from a restricted circle of persons unless –
    - (i) the opportunity to invest money through such contracts is afforded exclusively to an identifiable category of persons to whom the existence of the opportunity is directly communicated by the insurer or the insurer's appointed agent,
    - (ii) the members of that category are the only persons who may invest money in such contracts and they are in possession of sufficient information to be able to make a reasonable evaluation of the investment, and
    - (iii) the number of persons in Jersey or elsewhere to whom the existence of such opportunity is so communicated does not exceed 50; and
  - (b) the reference in paragraph (1) to capital acquired by means of an offer to the public of units for subscription, sale or exchange shall be read as a reference to capital acquired by means of the

advertising or promotion of the opportunity to invest money through such contracts.

- (6) Without prejudice to the generality of the foregoing provisions of this Article, a company which by virtue of paragraph (4) is deemed to be a company issuing units shall itself be deemed to be a collective investment fund.
- (7) Schemes and arrangements may be prescribed, either by name or description, which are not to constitute collective investment funds for the purposes of this Law.<sup>21</sup>

#### **4 Functionaries**

- (1) The Schedule shall apply for determining who is, or is to be treated as, a functionary.
- (2) The Minister may, on the recommendation of the Commission, by Order amend the provisions of the Schedule.<sup>22</sup>
- (3) An Order made under this Article shall not come into operation before the expiration of 6 months beginning on the date on which the Order is made.

#### **5 Requirement for functionary to hold permit**

- (1) Subject to the provisions of this Law, no person shall in or from within Jersey be, or hold himself or herself out as being, a functionary of a recognized fund except under a permit unless that person's function in relation to that recognized fund is to be performed wholly outside Jersey and paragraph (2) does not apply to that person.<sup>23</sup>
- (2) Subject to the provisions of this Law, no company incorporated under the Loi (1861) sur les Sociétés à Responsabilité Limitée<sup>24</sup> or the Companies (Jersey) Law 1991<sup>25</sup> and no limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997<sup>26</sup> or an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011<sup>27</sup> or limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994<sup>28</sup> or a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011<sup>29</sup> shall in or from within a country or territory outside Jersey be, or hold itself out as being, a functionary of a recognized fund except under a permit.<sup>30</sup>
- (3) Any person who contravenes this Article shall be guilty of an offence and liable to a fine or to imprisonment for a term not exceeding 7 years or to both such fine and such imprisonment but the rights of the persons concerned in any transaction shall not be affected by such contravention.<sup>31</sup>
- (4) Paragraphs (1) and (2) shall not apply to such persons or class of persons as may be prescribed.<sup>32</sup>

**6 Application for permit<sup>33</sup>**

- (1) An application for a permit shall –
  - (a) be in the form required from time to time by the Commission;
  - (b) describe the function of the applicant;
  - (c) specify the collective investment fund and the class thereof (if any) to which the applicant's function relates;
  - (d) contain or be accompanied by such other particulars as the Commission may require;
  - (e) be verified in such manner and to such extent as the Commission may require; and
  - (f) be accompanied by such fee as may be published by the Commission in accordance with Article 15(5) of the Financial Services Commission (Jersey) Law 1998.<sup>34</sup>
- (2) Without prejudice to the generality of paragraph (1)(d) the Commission may require an applicant to furnish any information about the collective investment fund to which the applicant's function relates which the Commission needs for the purposes of considering whether to grant or refuse a permit under Article 7(1).<sup>35</sup>
- (3) <sup>36</sup>
- (4) An applicant who, while the application is awaiting consideration by the Commission –
  - (a) determines to bring about any alteration in it; or
  - (b) becomes aware of any event which may affect in any material respect any information furnished by the applicant to the Commission in connection with the application,shall forthwith give written notice of that matter to the Commission.<sup>37</sup>

**7 Grant or refusal of permit, imposition of conditions and cancellation of permit**

- (1) The Commission may grant a permit either unconditionally or subject to such conditions as it considers appropriate, or may refuse to grant a permit.<sup>38</sup>
- (2) Every permit shall specify the collective investment fund and the class of fund (if any) to which the holder's function relates.
- (3) The Commission may from time to time vary any condition attached to the grant of a permit or attach a new condition.<sup>39</sup>
- (4) The Minister may, on the recommendation of the Commission, prescribe conditions applicable to –
  - (a) all permits;
  - (b) certain classes of permits;
  - (c) all permits granted to certain functionaries or groups of functionaries; or

- 
- (d) all permits granted in relation to collective investment funds of a certain kind.<sup>40</sup>
- (5) Conditions attached, varied or prescribed under paragraph (1), (3) or (4) may indicate that a code of practice is to be wholly or partly disregarded for the purposes of Article 15(4).<sup>41</sup>
- (6) The Commission may refuse to grant a permit under paragraph (1) on one or more of the following grounds, namely that –
- (a) having regard to the information before the Commission as to –
- (i) the integrity, competence, financial standing, structure and organization of the applicant,
  - (ii) the persons employed by or associated with the applicant for the purposes of the applicant's business or who are principal persons in relation to the applicant,
  - (iii) the nature of the collective investment fund to which the applicant's function relates,
  - (iv) the function to be performed by the applicant,
  - (v) the reputation of the applicant, and
  - (vi) any other functionaries there are or may be of the collective investment fund to which the application relates,
- the Commission is not satisfied that the applicant is a fit and proper person to be granted a permit;
- (b) the applicant has at any time and whether or not in relation to the application, in any case where information was required under this Law in any connection –
- (i) failed to provide any such information, or
  - (ii) provided to the Commission information which was untrue or misleading in any material particular;
- (c) the applicant has at any time failed to comply in any material respect with –
- (i) any condition attached to the grant of a permit or to the grant of a certificate, including any varied condition, or
  - (ii) any condition prescribed as applicable to a permit or certificate (whether generally or not);
- (d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business has been convicted of –
- (i) an offence (whether under the law of Jersey or of a country or territory outside Jersey) involving fraud or other dishonesty,
  - (ii) an offence under –
    - (A) this Law,
    - (B) the Banking Business (Jersey) Law 1991<sup>42</sup>,
    - (C) the Financial Services (Jersey) Law 1998<sup>43</sup>,

- (D) the Insurance Business (Jersey) Law 1996<sup>44</sup>,
  - (E) any Regulation or Order made under any of those Laws,
  - (F) the Alternative Investment Funds (Jersey) Regulations 2012<sup>45</sup>,
  - (iii) any offence similar to those listed in clause (ii) under the law of a country or territory outside Jersey,
  - (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether of Jersey or of a country or territory outside Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insider dealing, insolvency, insurance, money laundering or terrorist financing, or
  - (v) an offence (whether under the law of Jersey or of a country or territory outside Jersey) of perjury or conspiracy to pervert the course of justice;
- (e) it appears to the Commission, as a result of information provided in pursuance of requirements of or under Article 6, or information otherwise obtained, that –
- (i) for the protection of the public or of existing or potential participants in the collective investment fund, the applicant should not be granted a permit,
  - (ii) in order to protect the reputation and integrity of Jersey in financial and commercial matters, the applicant should not be granted a permit, or
  - (iii) in the best economic interests of Jersey, the applicant should not be granted a permit;
- (f) the Commission has reason to believe that the applicant has at some time contravened a code of practice;
- (g) the applicant has failed at any time to comply with a direction by the Commission under Article 13.<sup>46</sup>
- (6A) In exercising its or his or her powers in respect of conditions under paragraphs (1), (3) or (4), the Commission or Minister, as the case may be, shall have regard to such of the matters referred to in paragraph (6) as it, he or she thinks appropriate.<sup>47</sup>
- (6B) For the purposes of paragraph (6A), when the Commission is exercising its powers under paragraph (3), paragraph (6) shall apply with the substitution for references to the applicant of references to the holder of a permit.<sup>48</sup>
- (7) The Commission may cancel a permit –
- (a) if the holder of the permit has not commenced the holder's function for which the permit is granted within one year of the date of the grant;
  - (b) if the holder of the permit ceases to perform the holder's function for which the permit is granted;

- (c) at the request of the holder of the permit;
  - (d) if it appears to the Commission that any requirements of the Commission in respect of the collective investment fund or the class thereof to which the holder's function relates are no longer satisfied;
  - (e) if it appears to the Commission that the holder of the permit has contravened any provision of this Law, or any Regulation or Order made, or a condition of any permit granted, under this Law or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information;
  - (f) on one or more of the grounds set out in paragraph (6), which shall apply in such a case with the substitution for references to the applicant of references to the holder of a permit;
  - (g) if there is a failure to comply with a notice of objection served under Article 12A; or
  - (h) if the holder of a permit fails to pay any fee published in accordance with paragraph (12).<sup>49</sup>
- (8) <sup>50</sup>
- (9) <sup>51</sup>
- (10) Any person who contravenes any condition attached to a permit under paragraph (1) or (3) or any condition applicable to a permit under paragraph (4) shall be guilty of an offence in respect of each such contravention.<sup>52</sup>
- (11) The record of the conviction of any person for an offence under paragraph (10) shall be admissible in civil proceedings as evidence of the fact of the breach of a condition attached or applicable under this Article.<sup>53</sup>
- (12) The Commission may, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998, publish fees that shall be payable by the holders of permits at such intervals and upon the occurrence of such events as the Commission may determine.<sup>54</sup>

## **8 Requirement for unclassified fund to hold certificate<sup>55</sup>**

- (1) A person who is –
  - (a) a company issuing units that is an unclassified fund and that –
    - (i) is incorporated under the Loi (1861) sur les Sociétés à Responsabilité Limitée<sup>56</sup> or the Companies (Jersey) Law 1991<sup>57</sup>, or
    - (ii) has an established place of business in Jersey;
  - (b) a trustee of a unit trust that is an unclassified fund and that is –
    - (i) a trust whose proper law is the law of Jersey, or
    - (ii) managed from within Jersey; or
  - (c) the general partner of –

- (i) an incorporated limited partnership established in accordance with the Incorporated Limited Partnerships (Jersey) Law 2011, a limited partnership established in accordance with the Limited Partnerships (Jersey) Law 1994<sup>58</sup> or a separate limited partnership established in accordance with the Separate Limited Partnerships (Jersey) Law 2011, or
- (ii) a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997<sup>59</sup>,

that is an unclassified fund managed from within Jersey,

shall not carry on any business of the fund unless a certificate has been granted under Article 8B in relation to the fund and the certificate has not been cancelled.<sup>60</sup>

- (2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to imprisonment for a term of 7 years and to a fine.
- (3) If paragraph (1) is contravened, the rights of any person concerned in any transaction with or in relation to the unclassified fund shall not be affected by the contravention.
- (4) For the purposes of paragraph (1), ‘established place of business in Jersey’, in relation to a company, includes –
  - (a) a branch, in Jersey, of the business of the company; and
  - (b) an office, in Jersey, of the company.
- (5) For the purposes of paragraph (1), a company shall not be taken to have an established place of business in Jersey by reason only that –
  - (a) the directors of the company meet in Jersey; or
  - (b) a manager, director, or administrator, of the company is ordinarily resident in Jersey.
- (6) Paragraph (1) shall not apply to such persons or class of persons as may be prescribed.<sup>61</sup>

#### **8A Application for certificate<sup>62</sup>**

- (1) A person who is, or is to be –
  - (a) a company issuing units that is an unclassified fund, or the manager of a company issuing units that is an unclassified fund;
  - (b) a trustee of a unit trust that is an unclassified fund; or
  - (c) the general partner of an incorporated limited partnership, a limited partnership, a separate limited partnership or a limited liability partnership that is an unclassified fund,

may apply to the Commission for the grant of a certificate in relation to the fund.<sup>63</sup>

- (2) An application for a certificate shall –
  - (a) be in the form required from time to time by the Commission;



- 
- (b) specify the collective investment fund and the class of fund (if any) to which the applicant's function as manager, trustee or general partner, as the case may be, relates;
  - (c) contain or be accompanied by any other particulars that the Commission may require;
  - (d) be verified in the manner, and to the extent, that the Commission may require; and
  - (e) be accompanied by such fee as may be published by the Commission in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998<sup>64, 65</sup>
- (3) Without prejudice to the generality of paragraph (2)(c), the Commission may require an applicant to provide any information about the collective investment fund to which the application relates that the Commission needs for the purposes of considering whether to grant or refuse a certificate under Article 8B(1).
- (4) An applicant who, while the application is awaiting consideration by the Commission –
- (a) wishes to alter the application; or
  - (b) becomes aware of any event which may affect in any material respect any information provided by the applicant to the Commission in connection with the application,
- shall as soon as practicable give written notice of that matter to the Commission.

**8B Grant or refusal of certificate, imposition of conditions and cancellation of certificate<sup>66</sup>**

- (1) The Commission may grant, or refuse to grant, to an applicant a certificate in relation to an unclassified fund.
- (2) A certificate may be granted either unconditionally or subject to the conditions that the Commission considers appropriate.
- (3) Every certificate shall specify the collective investment fund and the class of fund (if any) to which the certificate relates.
- (4) The Commission may from time to time vary any condition attached to the grant of a certificate under paragraph (2) or attach a new condition.
- (5) The Minister may, on the recommendation of the Commission, by Order prescribe conditions applicable to –
  - (a) all certificates;
  - (b) certain classes of certificates; or
  - (c) all certificates granted in relation to collective investment funds of a certain kind.
- (6) Conditions attached, varied or prescribed under paragraph (2), (4) or (5) may indicate that a code of practice is to be wholly or partly disregarded for the purposes of Article 15(4).

- (7) The Commission may refuse to grant a certificate on one or more of the following grounds, namely that –
- (a) having regard to the information before the Commission as to –
    - (i) the integrity, competence, financial standing, structure and organization of the applicant,
    - (ii) the persons employed by or associated with the applicant for the purposes of the applicant's business or who are principal persons in relation to the applicant,
    - (iii) the nature of the collective investment fund to which the applicant's role relates,
    - (iv) the role to be performed by the applicant in relation to the collective investment fund,
    - (v) the reputation of the applicant, and
    - (vi) any other fund service providers there are or may be in respect of the collective investment fund to which the application relates,the Commission is not satisfied that the applicant is a fit and proper person to be granted a certificate;
  - (b) the applicant has at any time and whether or not in relation to the application, in any case where information was required under this Law in any connection –
    - (i) failed to provide any such information, or
    - (ii) provided to the Commission information which was untrue or misleading in any material particular;
  - (c) the applicant has at any time failed to comply in any material respect with –
    - (i) any condition attached to the grant of a certificate or to the grant of a permit, including any varied condition, or
    - (ii) any condition prescribed as applicable to a certificate or permit (whether generally or not);
  - (d) the applicant or any person employed by or associated with the applicant for the purposes of the applicant's business has been convicted of –
    - (i) an offence (whether under the law of Jersey or of a country or territory outside Jersey) involving fraud or other dishonesty,
    - (ii) an offence under –
      - (A) this Law,
      - (B) the Banking Business (Jersey) Law 1991,
      - (C) the Financial Services (Jersey) Law 1998,
      - (D) the Insurance Business (Jersey) Law 1996,
      - (E) any Regulation or Order made under any of those Laws;
    - (iii) any similar offence to those listed in clause (ii) under the laws of any country or territory outside Jersey,

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- (iv) where clause (ii) or (iii) does not apply, an offence under any enactment (whether of Jersey or of a country or territory outside Jersey) relating to building societies, companies, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insider dealing, insolvency, insurance, money laundering or terrorist financing, or
  - (v) an offence (whether under the law of Jersey or of a country or territory outside Jersey) of perjury or conspiracy to pervert the course of justice;
- (e) it appears to the Commission, as a result of information provided in pursuance of requirements of or under Article 8A, or information otherwise obtained, that –
- (i) for the protection of the public or of existing or potential participants in the collective investment fund, the applicant should not be granted a certificate,
  - (ii) in order to protect the reputation and integrity of Jersey in financial and commercial matters, the applicant should not be granted a certificate, or
  - (iii) in the best economic interests of Jersey, the applicant should not be granted a certificate;
- (f) the Commission has reason to believe that the applicant has at some time contravened a code of practice;
- (g) the applicant has failed at any time to comply with a direction by the Commission under Article 13.<sup>67</sup>
- (8) In exercising its or his or her powers under paragraphs (2), (4) or (5), the Commission or Minister, as the case may be, shall have regard to such of the matters referred to in paragraph (7) as it, he or she thinks appropriate.
- (9) For the purposes of paragraph (8), when the Commission is exercising its powers under paragraph (4), paragraph (7) shall apply with the substitution for references to the applicant of references to the certificate holder.
- (10) The Commission may cancel a certificate in relation to a collective investment fund –
- (a) if the fund has ceased to operate;
  - (b) at the request of –
    - (i) where the fund is a company issuing units, the company,
    - (ii) where the fund is a unit trust, a trustee of the unit trust, or
    - (iii) where the fund is an incorporated limited partnership, a limited partnership, a separate limited partnership or a limited liability partnership, the general partner of the partnership;
  - (c) if it appears to the Commission that any requirements of the Commission in respect of the collective investment fund, or the

- class of fund of which the fund is a member, are no longer satisfied;
- (d) if it appears to the Commission that any provision of this Law, or any Regulation or Order made, or a condition of any certificate granted, under this Law, has been contravened by a person who is employed on behalf of the fund or provides services to the fund or if a person has, in purported compliance with any such provision, provided the Commission with false, inaccurate or misleading information;
  - (e) on one or more of the grounds set out in paragraph (7), which shall apply in such a case with the substitution for references to the applicant of references to the certificate holder; or
  - (f) if the certificate holder fails to pay any fee published in accordance with paragraph (13).<sup>68</sup>
- (11) Any person who fails to comply with any condition attached to a certificate under paragraph (2) or (4) or any condition applicable to a certificate under paragraph (5) shall be guilty of an offence.
  - (12) The record of the conviction of any person for an offence under paragraph (11) shall be admissible in civil proceedings as evidence of the fact of the breach of a condition attached or applicable under this Article.
  - (13) The Commission may, in accordance with Article 15 of the Financial Services Commission (Jersey) Law 1998<sup>69</sup>, publish fees that shall be payable by the holders of certificates at such intervals and upon the occurrence of such events as the Commission may determine.<sup>70</sup>

### **8C Display of permit or certificate and conditions<sup>71</sup>**

- (1) When the Commission grants a permit to a person under Article 7(1) or a certificate under Article 8B(1), it may give that person notice in writing of the manner in which that person shall display or otherwise make available to members of the public –
  - (a) that permit or certificate, or the information it contains, or both; and
  - (b) a record of such conditions as the Commission may specify, being conditions –
    - (i) to which that permit or certificate is subject under Article 7(1) or 8B(2), or
    - (ii) to which that permit or certificate is subject by virtue of an Order under Article 7(4) or 8B(5).
- (2) Where the Commission varies a condition of, or attaches any new condition to, a permit under Article 7(3) or varies a condition of, or attaches any new condition to, a certificate under Article 8B(4), it may give the holder of the permit or the relevant certificate holder notice in writing of the manner in which the holder shall display or otherwise make available to members of the public a record of that condition as varied, or the new condition, as the case may be.

- (3) The Commission may at any time vary any requirement in any notice it has given to a person under paragraph (1) or (2) by further notice to that person.
- (4) Without prejudice to the generality of paragraphs (1), (2) and (3), a notice under any of those paragraphs may require the permit, certificate, information or record of conditions, as the case may be, to be displayed at any address at which the holder of a permit or certificate holder, as the case may be, carries on business relating to a collective investment fund or to be published on the internet, or both.
- (5) A notice under paragraph (1) shall take effect on such date as is specified in the notice.
- (6) A notice under paragraph (2) or (3) shall take effect in accordance with Article 8E.
- (7) A holder of a permit or certificate holder who carries on business relating to a collective investment fund in breach of any requirements in a notice given under this Article which have effect in relation to that business shall be guilty of an offence and liable to a fine of level 2 on the standard scale.

**8D Notice of decisions and reasons<sup>72</sup>**

- (1) The Commission shall give notice as follows –
  - (a) if under Article 7 it refuses to grant a permit, it shall give notice to the applicant for the permit;
  - (b) if under Article 7 it cancels a permit, it shall give notice to the person named in the permit as the holder of a permit;
  - (c) if under Article 7 it attaches a condition to the grant of a permit, attaches a condition to a permit already granted or varies a condition attached to a permit, it shall give notice to the holder of the permit;
  - (d) if under Article 8B it refuses to grant a certificate, it shall give notice to the applicant for the certificate;
  - (e) if under Article 8B it cancels a certificate, it shall give notice to the person named in the certificate as certificate holder;
  - (f) if under Article 8B it attaches a condition to the grant of a certificate, attaches a condition to a certificate already granted or varies a condition attached to a certificate, it shall give notice to the person named in the certificate as certificate holder;
  - (g) if under any Order under this Law it refuses consent, refuses approval, or imposes a requirement, it shall give notice to the relevant holder of a permit or certificate holder (if any) and any other person in respect of whom the refusal or imposition is made.
- (2) A notice required under paragraph (1) shall –
  - (a) set out the terms of the refusal, cancellation, attachment of conditions, variation of conditions, or imposition, of which it is notice;

- (b) in the case of the attachment of conditions, set out also the terms of the conditions;
  - (c) in the case of the variation of conditions, set out also the terms of the conditions as so varied;
  - (d) give the reasons for the refusal, cancellation, attachment, variation or imposition (except to the extent that the refusal, cancellation, attachment, variation or imposition is made on the application of the relevant holder of a permit, certificate holder or applicant); and
  - (e) give particulars of the rights of appeal conferred by Article 8F.
- (3) A notice imposing a requirement under Article 8C shall –
- (a) give the reasons for the imposition of the requirement; and
  - (b) give particulars of the rights of appeal conferred by Article 8F.
- (4) A notice by which an objection and direction are made under Article 12A shall –
- (a) give the reasons for making the objection and direction; and
  - (b) give particulars of the rights of appeal conferred by Article 8F.
- (5) A notice by which a direction is given under Article 12D shall give the reasons for giving the direction.
- (6) A notice of a direction under Article 13 shall –
- (a) give the reasons for the giving of the direction;
  - (b) specify when the direction is to have effect;
  - (c) give particulars of the provisions of Article 13(5) and (6); and
  - (d) give particulars of the rights of appeal conferred by Article 8F.
- (7) If under this Article the Commission is required to give reasons in a notice, that requirement shall not require the Commission –
- (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
  - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

### **8E Delay in taking effect<sup>73</sup>**

- (1) Any of the following acts of the Commission shall not take effect until one month after notice of them is given under this Law, such date as is specified in the notice, or, if an appeal is lodged under this Law against the act or the decision relating to the act, the appeal is determined by the Court or withdrawn, whichever is the latest time –
- (a) the cancellation of a permit under Article 7;
  - (b) the attachment under Article 7 of an additional condition to a person's permit, or variation under that Article of the conditions attached to a person's permit, at any time after the grant of the permit;
  - (c) the cancellation of a certificate under Article 8B;

- (d) the attachment under Article 8B of an additional condition to a certificate, or variation under that Article of the conditions attached to a certificate, at any time after the grant of the certificate;
  - (e) the imposition of a requirement under Article 8C(2) or (3) or 13(2)(d) or (f);
  - (f) an objection under Article 12A(2) or (3).<sup>74</sup>
- (2) Paragraph (1) shall not however have effect if –
- (a) the persons entitled to notice of the act agree with the Commission that the act take effect at a time earlier than the time that would apply under paragraph (1); or
  - (b) the Court orders otherwise under paragraph (3).
- (3) If, on the application of the Commission, the Court is satisfied that it is in the best interests of existing or potential participants in a collective investment fund to which a permit or certificate relates, or of the public, that paragraph (1) should not have effect, or should cease to have effect in a particular case, or that the period specified in paragraph (1) should be reduced, the Court may so order.<sup>75</sup>
- (4) An order under paragraph (3) may be made without prior notice to, and without hearing, the relevant holder of a permit, certificate holder, unclassified fund or fund service provider in relation to an unclassified fund.
- (5) The order shall have immediate effect, but any person aggrieved by the order may apply to the Court to vary or set aside the order.
- (6) In respect of an application under paragraph (3), the Court may make such order as it thinks fit, and in respect of an application under paragraph (5), the Court may make such order in respect of the relevant order under paragraph (3) as it thinks fit.

## **8F Appeals<sup>76</sup>**

- (1) A person aggrieved by an act of the Commission, being –
- (a) the refusal, or cancellation, under Article 7 of a permit;
  - (b) the attachment under Article 7 of a condition to the grant of a person's permit, the attachment under that Article of an additional condition to a person's permit, or the variation under that Article of the conditions attached to a person's permit;
  - (c) the refusal, or cancellation, under Article 8B of a certificate;
  - (d) the attachment under Article 8B of a condition to the grant of a person's certificate, the attachment under that Article of an additional condition to a person's certificate, or the variation under that Article of the conditions attached to a person's certificate;
  - (e) the imposition of a requirement under Article 8C;
  - (f) an objection and a direction under Article 12A;
  - (g) the giving of a direction under Article 13;

- (h) the refusal of an application under Article 13(5) or granting of such an application only in part; or
  - (i) a refusal of consent, refusal of approval, or imposition of a requirement, under any Order under this Law,
- may appeal to the Court, in accordance with this Article, against that act.
- (2) An appeal under paragraph (1) may be made only on the ground that the act appealed against was unreasonable having regard to all the circumstances of the case.
  - (3) A person's appeal under this Article shall be lodged with the Court no later than the day that is one month after the day on which notice was served on the person of the relevant act.
  - (4) On an appeal under this Article, the Court may make such interim or final order as it thinks fit.
  - (5) If an appeal is made under paragraph (1)(g) against the giving of a direction that makes a requirement referred to in Article 13(2)(d) or (f), the direction shall have no effect until the appeal is determined by the Court or withdrawn.
  - (6) In other cases, an appeal made under paragraph (1)(g) against the giving of a direction shall not suspend the operation of the direction.
  - (7) An appeal made under paragraph (1)(h) in relation to an application under Article 13(5) shall not suspend the operation of the direction in connection with which the application was made.

## **9 General power to require information and documents<sup>77</sup>**

- (1) The Commission, an officer or an agent may by notice in writing served on a defined person require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires the person to provide for the purposes of the performance of the Commission's functions under this Law;
  - (b) to attend at such times and places as may be specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purposes of the performance of the Commission's functions under this Law.
- (2) If the Commission has reasonable grounds to suspect that a person has contravened Article 5, 8 or 10, the Commission, an officer or an agent may, by notice in writing served on that person, require the person to do either or both of the following –
  - (a) to provide the Commission, an officer or an agent, at such times and places as are specified in the notice, with such information or documents as are specified in the notice and as the Commission, an officer or an agent reasonably requires for the purposes of investigating the suspected contravention;



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- (b) to attend at such times and places as are specified in the notice and answer such questions as the Commission, an officer or an agent reasonably requires the person to answer for the purpose of investigating the suspected contravention.
- (3) In a case where the Commission, an officer or an agent may, by notice in writing served on a person under paragraph (1) or (2), require the person to provide information or documents, the Commission, an officer or an agent may in addition or instead require any other person (by notice in writing served on the latter person) who appears to be in possession of some or all of the information or documents to do something that the Commission, an officer or an agent could have required the first-mentioned person to do under sub-paragraph (a) or (b) of that paragraph.
- (4) An officer or an agent may, on producing if required evidence of his or her authority, enter, at a reasonable time, any premises occupied by a person on whom a notice has been served under paragraph (1), (2) or (3), or any other premises where information or documents are kept by such person, for the purpose of obtaining there the information or documents required by that notice, putting the questions referred to in paragraph (1)(b) or (2)(b) or of exercising the power conferred by paragraph (8), as the case may be.
- (5) If the Commission, an officer or an agent serves notice on a person under paragraph (1) or (2), the Commission, officer or agent may, by the same or another notice served on the person, require the person to provide verification, in accordance with the latter notice, of any information, or documents, required from the person under paragraph (1) or (2) (as the case may be).
- (6) The Commission, an officer or an agent may by notice in writing served on a person specified in paragraph (15) require the person to provide a report, by an accountant, or other person with relevant professional skill, nominated or approved by the Commission and appointed by the person served with the notice under this paragraph, being a report –
- (a) on, or on any aspect of, any information, documents, or questions, that the Commission, an officer or an agent could require the person, by notice under paragraph (1) or (2), to provide or answer (whether or not notice has in fact been served on the person under paragraph (1) or (2)); and
- (b) in such form (if any) as the notice under this paragraph may specify.
- (7) If, under this Article, a person provides documents in the person's possession but claims a lien on the documents so provided, the provision of the documents shall be without prejudice to the lien.
- (8) The power under this Article to require documents to be provided includes power –
- (a) if the documents are provided, to retain them, to take copies of them or to take extracts from them, and to require the person providing the documents, or any person who appears to possess

- information relating to the documents, to provide an explanation of them; or
- (b) if the documents are not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where they are.
- (9) If documents provided under this Article are retained under paragraph (8)(a) the documents may be so retained –
- (a) for a period of one year; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.
- (10) If the person providing a document that is retained under paragraph (8)(a) requires the document for the purpose of the person's business and requests the document (or a copy of it) from the Commission, the Commission shall supply the person with a copy of the document as soon as practicable.
- (11) If a person fails without reasonable excuse to comply with a requirement imposed on the person under this Article or obstructs an officer, or agent, exercising powers under paragraph (4), the person shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.
- (12) Nothing in this Article shall require the disclosure or provision by a person to the Commission, an officer or an agent of information, or documents, that the person would, in proceedings in the Court, be entitled to refuse to disclose or to provide on the grounds of legal professional privilege, except, if the person is a lawyer, the name and address of his or her client.
- (13) A statement made by a person in compliance with a requirement imposed under this Article shall not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (11) or proceedings under any provision of Article 16 other than paragraph (6) of Article 16.
- (14) In this Article –
- “agent”, in any provision, means an agent of the Commission, being an agent who has been authorized by the Commission to perform the functions set out or referred to in that provision;
- “defined person” means any of the following persons –
- (a) a fund person;
- (b) a person who was a fund person at any time;
- (c) a person who is a principal person, or key person, in relation to another person who is a fund person or was a fund person at any time;
- (d) a person who was at any time a principal person, or key person, in relation to another person who is a fund person or was a fund person at, before or after that time;
- (e) a person who is, or was at any time, an associate in relation to a defined person within the meaning of sub-paragraph (c) or (d);

- (f) a person who is an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at any time;
- (g) a person who was at any time an employee of, or party to a contract for services with, another person who is a fund person or was a fund person at, before or after that time;
- (h) a person who is an employee of a person who is a party to a contract for services with another person who is a fund person;
- (i) a person who was at any time an employee of a person who was at that time a party to a contract for services with another person who was a fund person at that time;

“fund person” means a holder of a permit, a fund service provider (in relation to an unclassified fund) or a certificate holder;

“officer”, in any provision, means an officer of the Commission, being an officer who has been authorized by the Commission to perform the functions set out or referred to in that provision.

- (15) For the purposes of paragraph (6), the following persons are specified –
  - (a) a person within sub-paragraph (a) or (b) of the definition of “defined person” in paragraph (14) or a person within sub-paragraph (c) or (d) of that definition (other than as a key person);
  - (b) a person who the Commission has reasonable grounds to suspect has contravened Article 5 or 8.
- (16) For the avoidance of doubt, in sub-paragraph (d), (g) or (i) of the definition of “defined person” in paragraph (14), the reference to a person who was a fund person includes such a person who is no longer in existence at the time when the relevant function is exercised under this Article.
- (17) For the avoidance of doubt –
  - (a) a time that is specified for the purposes of any provision of this Article may be, but is not required to be, expressed in terms of times, dates, intervals, periods or time limits; and
  - (b) a document, or information, that is specified for the purposes of any provision of this Article may be, but is not required to be, specified in terms of one or more classes or descriptions.

## **10 Misleading statements and practices**

- (1) Any person who –
  - (a) makes a statement, promise or forecast which that person knows to be misleading, false or deceptive or dishonestly conceals any material facts; or
  - (b) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive,is guilty of an offence if that person makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as

to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) to enter or offer to enter into, or refrain from entering or offering to enter into, an investment agreement or to exercise, or refrain from exercising, any rights conferred by units.

- (2) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any units is guilty of an offence if that person does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those units or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those units.
- (3) In proceedings brought against any person for an offence under paragraph (2) it shall be a defence for the person to prove that he or she reasonably believed that the act or conduct would not create an impression that was false or misleading as to the matters mentioned in paragraph (2).
- (4) In paragraph (1) “an investment agreement” means –
  - (a) any agreement or arrangement for or with a view to acquiring, disposing of, subscribing for or underwriting units; or
  - (b) any agreement or arrangement under which a person is to receive advice as to the acquisition, sale, subscription for or underwriting of units or as to the exercise of the rights conferred by units.<sup>78</sup>
- (5) A person guilty of any offence under this Article shall be liable to a fine or to imprisonment for a term not exceeding 10 years, or both.<sup>79</sup>

## **11 Classification of collective investment funds**

- (1) The Minister may, on the recommendation of the Commission, by Order –
  - (a) classify collective investment funds;
  - (b) specify requirements which must be satisfied by a collective investment fund for inclusion in a particular class or for remaining in such a class;
  - (c) impose requirements in respect of a class; or
  - (d) make provision for the grant by the Commission of a certificate to the effect that a collective investment fund satisfies the requirements for inclusion in the class named in the certificate and is so included at the date of issue of the certificate.<sup>80</sup>
- (2) Without prejudice to paragraph (1), the Minister may, on the recommendation of the Commission, by Order provide for the constitution, management, control and winding up of a collective investment fund, or any class of such fund, and prescribe the powers and duties of the functionaries of any such fund and the rights and obligations of the participants in any such fund.<sup>81</sup>
- (3) Without prejudice to the generality of paragraph (2), Orders made thereunder may make provision –

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- (a) as to the issue and redemption of units;
  - (b) as to the expenses of the collective investment fund and the means of meeting them;
  - (c) for the appointment, removal, powers and duties of an auditor for the collective investment fund;
  - (d) for restricting or regulating the investment and borrowing powers exercisable in relation to the collective investment fund;
  - (e) requiring the keeping of records with respect to the transactions and financial position of the collective investment fund and for the inspection of those records;
  - (f) requiring the preparation of periodical reports with respect to the collective investment fund and the furnishing of those reports to the participants in the collective investment fund and to the Commission; and
  - (g) with respect to the amendment of the collective investment fund.<sup>82</sup>
- (4) Orders under paragraph (2) may make provision as to the contents of the documents constituting the collective investment fund (and as to contents which if included shall be of no effect) including provision requiring any of the matters mentioned in paragraph (3) to be dealt with in the documents; but Orders under paragraph (2) shall be binding on the functionaries of, and the participants in, the collective investment fund independently of the contents of the documents and, in the case of the participants, shall have the effect as if contained in them.
- (5) For the purposes of paragraph (4) “documents constituting the collective investment fund” includes any agreements entered into between the functionaries of the collective investment fund with each other and with the collective investment fund.

## 12 Compensation schemes<sup>83</sup>

- (1) The States may by Regulations establish, in relation to collective investment funds generally or a particular collective investment fund, a scheme or schemes for compensating investors in cases where –
- (a) functionaries or former functionaries; or
  - (b) fund service providers in relation to an unclassified fund, former fund service providers in relation to an unclassified fund or persons to whom a certificate has been granted,
- are unable, or likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them in connection with a collective investment fund or collective investment funds.<sup>84</sup>
- (2) Without prejudice to the generality of paragraph (1), Regulations may in particular make provision –
- (a) for levies to be imposed on the persons described in paragraph (1)(a) and (b) for the purpose of meeting expenses incurred, or expected to be incurred, including expenses related to establishing the scheme and paying compensation;

- (b) for the procedure to be followed in making a claim;
- (c) for making interim payments before a claim is finally determined;
- (d) limiting the amount payable on a claim to a specified maximum amount or a maximum amount calculated in a specified manner;
- (e) for payment to be made, in specified circumstances, to a person other than the claimant;
- (f) for the determination and regulation of matters relating to the scheme by any specified person;
- (g) as to the effect of a payment of compensation under the scheme in relation to rights or obligations arising out of the claim against a person described in paragraph (1)(a) or (b) in respect of which the payment was made;
- (h) for conferring on any person managing the scheme a right of recovery against a person described in paragraph (1)(a) or (b).<sup>85</sup>

#### **12A Objection to principal person or key person and to changes in holdings<sup>86</sup>**

- (1) This paragraph applies where it appears to the Commission at any time, that on the information before it, and having regard to the matters set out in Article 7(6) or 8B(7), a person who is a principal person, or key person of any class, in relation to a holder of a permit or certificate holder or in respect of whom notice has been given that the person will become (respectively) a principal person, or key person of any class, is not a fit and proper person to be (respectively) a principal person, or key person of the relevant class or any class, in relation to the holder of a permit or certificate holder.
- (2) Where paragraph (1) applies, the Commission shall serve on the person described in that paragraph who is or will become a principal person or key person and on the holder of a permit or certificate holder a written notice of objection, directing that the person shall not continue to be, or shall not become, (respectively) a principal person, or key person of the relevant class or any class.
- (3) Following receipt of a notice under Article 12B(2) that a person has increased his or her holding, or is about to do so, or that the person is about to reduce or dispose of his or her holding, the Commission may serve on that person and on the holder of the permit concerned a written notice of objection, directing that that person shall not continue to have such increased holding, or shall not increase, reduce or dispose of the person's holding, as the case may be.

#### **12B Notification of change of principal person or key person and change in shareholding<sup>87</sup>**

- (1) No person shall become a principal person, or key person of any class, in relation to a holder of a permit or certificate holder unless that person has notified the Commission in writing of that person's intention to become such a principal person, or key person of that class, and the Commission has notified that person in writing that there is no objection to that person becoming such a principal person, or key person of that class.

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- (2) No person who is a shareholder controller shall increase, reduce or dispose of that person's holding in the company in respect of which that person is a shareholder controller so that the proportion of the share capital or voting rights held by the person in the company reaches, exceeds or falls below 20%, 33% or 50%, or so that the company becomes the subsidiary of such person or ceases to be such subsidiary, as the case may be, unless –
    - (a) the person has notified the Commission in writing of that person's intention to increase, reduce or dispose of such holding, as the case may be; and
    - (b) the Commission has notified the person in writing that there is no objection to the person's so doing.
  - (3) Subject to paragraph (5), a holder of a permit or certificate holder shall, before the end of one month beginning with the day on which that holder becomes aware that any person has become, is about to become or has ceased to be a principal person, or key person, in relation to that holder, or has increased, reduced or disposed of that person's holding, as the case may be, or is about to do so for the purposes of paragraph (2), give written notice to the Commission of that fact.
  - (4) For the purposes of paragraphs (1) and (3) a person shall be treated as –
    - (a) becoming a principal person, or key person, in relation to a holder of a permit or certificate holder if, being a principal person in one or more capacities, or a key person of any class, he or she becomes respectively a principal person in any other capacity or a key person of any other class; and
    - (b) ceasing to be a principal person, or key person, in relation to a holder of a permit or certificate holder if, being a principal person in one or more capacities, or a key person of any class, he or she ceases to be respectively a principal person in one or more such capacities or a key person of that class.
  - (5) The obligation imposed by paragraph (3) shall not apply in any case where a holder of a permit or certificate holder, as the case may be, has complied with an equivalent obligation under another enactment under which the Commission exercises a supervisory function or where the Commission by notice in writing waives the obligation, wholly or in part.
  - (6) A notice under paragraph (1), (2) or (3) that a person has become or is about to become a principal person or key person, or has increased, reduced or disposed of that person's holding or is about to do so, as the case may be, shall include such information regarding the person in question as may be required by the Commission.
  - (7) A notice under paragraph (2) or (3) that a person has ceased to be a principal person or key person or has reduced or disposed of that person's holding or is about to do so, as the case may be, shall include a statement of the reasons for the change.
  - (8) Following receipt of a notice under paragraph (1), (2) or (3), the Commission may, by giving written notice, require the person concerned or the holder of a permit or certificate holder, as the case may be, to

provide such additional information or documents as the Commission may require in order to decide whether to serve a notice of objection under Article 12A.

- (8A) Notice under paragraph (8) may include a requirement that the person concerned or the holder of a permit or certificate holder (as the case may be) provide verification, in accordance with the notice, of any information or documents referred to in that paragraph.<sup>88</sup>
- (9) A notice given by the Commission under paragraph (1) or (2) that there is no objection shall lapse if –
- (a) the person concerned does not become a principal person, or key person of the relevant class, as the case requires; or
  - (b) the increase, reduction or disposal, does not take place,
- within one year following the giving of the notice by the Commission.

**12C Failure to notify change of principal person or key person or changes in holdings<sup>89</sup>**

- (1) A holder of a permit or certificate holder who fails to give the notice required by Article 12B(3) shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.
- (2) Any person who –
- (a) fails to give a notice required by Article 12B(1) or (2) or becomes a principal person, or key person of any class, or increases, reduces or disposes of that person's holding before having been served with a notice by the Commission under Article 12B(1) or (2), as the case requires; or
  - (b) becomes or continues to be a principal person, or key person of any class, or continues to have an increased holding, or increases, reduces or disposes of, his or her holding, as the case may be, following service on that person of a notice of objection under Article 12A in that connection,
- shall be guilty of an offence.
- (3) Subject to paragraph (4), a person shall not be guilty of an offence under paragraph (2) if that person shows that he or she did not know of the acts or circumstances by which that person became a principal person, by which that person became a key person of any class, or whereby that person's holding was increased, reduced or disposed of, as the case may be.
- (4) Where a person subsequently becomes aware of the relevant acts or circumstances by which that person became a principal person, by which that person became a key person of any class, or whereby that person's holding was increased, reduced or disposed of, as the case may be, that person shall be guilty of an offence unless that person gives the Commission written notice of the fact that that person has become such a principal person, has become a key person of the relevant class, or has increased, reduced or disposed of the person's holding, as the case may be, within 14 days of becoming aware of that fact.



- (5) A person guilty of an offence under paragraph (2) or (4) shall be liable to imprisonment for a term of 2 years and to a fine.

**12D Powers of Commission and Court in respect of shares<sup>90</sup>**

- (1) The powers conferred by this Article shall be exercisable where –
- (a) a person has contravened Article 12C(2);
  - (b) the holder of the permit concerned is a company; and
  - (c) the person concerned is a shareholder controller of that company.
- (2) The Commission may, by notice in writing served on the person concerned, direct that any specified shares to which this Article applies shall, until further notice, be subject to one or more of the following restrictions –
- (a) any transfer of, or agreement to transfer, those shares or, in the case of unissued shares, any transfer or agreement to transfer the right to be issued with them, shall be void;
  - (b) no voting rights shall be exercisable in respect of the shares;
  - (c) no further shares shall be issued in right of them or in pursuance of any offer made to their holder;
  - (d) except in liquidation, no payment shall be made of any sum due from the holder of the permit on the shares, whether in respect of capital or otherwise.
- (3) Subject to paragraph (4), the Court may, on the application of the Commission, order the sale of any specified shares to which this Article applies and, if they are for the time being subject to any restrictions under paragraph (2), that they shall cease to be subject to those restrictions.
- (4) No order shall be made under paragraph (3) in a case where a notice of objection has been served under Article 12A –
- (a) until the end of the period within which an appeal can be brought against the notice of objection; and
  - (b) if such an appeal is brought, until it has been determined by the Court or withdrawn.
- (5) Where an order has been made under paragraph (3) the Court may, on the application of the Commission, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) Where shares are sold in pursuance of an order under this Article –
- (a) the proceeds of sale, less the costs of the sale, shall be paid to the Viscount for the benefit of the persons beneficially interested in them; and
  - (b) any such person may apply to the Court for an order that the whole or part of the proceeds be paid to the person by the Viscount.
- (7) This Article applies –
- (a) to all shares in the holder of a permit referred to in paragraph (1) held by the person concerned, or by any associate of the person,

which were not so held immediately before the person became a principal person, or increased his or her holding, or which were so held immediately before that person reduced or disposed of his or her holding, as the case may be; and

- (b) where the person concerned became a principal person, or increased his or her holding, or reduced, or disposed of his or her holding, as a result of the acquisition or disposal by the person or any associate of the person of shares in another company, to all the shares in that company which are held by the person or any associate of the person and were not so held before that person became a principal person or increased his or her holding, or which were so held immediately before that person reduced or disposed of his or her holding.
- (8) A copy of the notice served on the person concerned under paragraph (2) shall be served on the holder of the permit referred to in paragraph (1) and on any company referred to in paragraph (7)(b) and, if it relates to shares held by an associate of the principal person concerned, on that associate.
- (9) Any person who fails to comply with a notice served on the person under paragraph (2) or an order made under paragraph (3) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

### **13 Directions<sup>91</sup>**

- (1) If it appears to the Commission that –
- (a) any requirements in relation to a collective investment fund or funds of any class are no longer satisfied;
  - (b) it is in the best interests of existing or potential participants in a collective investment fund or funds of any class or in the best interests of the creditors of a collective investment fund or funds of any class;
  - (c) it is in the best interests of one or more collective investment funds, functionaries, holders of permits, or certificate holders;
  - (d) it is desirable in order to protect the reputation and integrity of Jersey in financial and commercial matters; or
  - (e) it is in the best economic interests of Jersey,
- the Commission may, whenever it considers it necessary, give, by notice in writing, such directions as it may consider appropriate in the circumstances.
- (2) Without prejudice to the generality of paragraph (1), a direction under this Article may –
- (a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;
  - (b) require that any principal person, or key person, in relation to –

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- (i) any functionary of a collective investment fund or fund of any class,
    - (ii) a certificate holder,
    - (iii) a fund service provider in relation to an unclassified fund or unclassified fund of any class,be removed, or removed and replaced, by another person acceptable to the Commission;
  - (c) require that any person having functions in relation to –
    - (i) a collective investment fund or fund of any class,
    - (ii) a certificate holder,
    - (iii) a fund service provider in relation to an unclassified fund or unclassified fund of any class,be removed, or removed and replaced, by another person acceptable to the Commission;
  - (d) require that any individual –
    - (i) not perform a specified function (or any function at all) for,
    - (ii) not engage in specified employment (or any employment at all) by, or
    - (iii) not hold a specified position (or any position at all) in the business of,any of the following –
    - (A) any functionary of a collective investment fund or of a fund of any class (or any functionary at all),
    - (B) a certificate holder (or any certificate holder at all),
    - (C) a fund service provider in relation to an unclassified fund or in relation to an unclassified fund of any class (or any fund service provider at all);
  - (e) require –
    - (i) a functionary of a collective investment fund or fund of any class,
    - (ii) a fund service provider in relation to an unclassified fund or unclassified fund of any class, or
    - (iii) a certificate holder,to cease the issue or redemption, or both the issue and redemption of units, on a date specified in the direction, either until such further date as is specified in that or another direction or indefinitely;
  - (f) require –
    - (i) a functionary of a collective investment fund or fund of any class,
    - (ii) a fund service provider in relation to an unclassified fund or unclassified fund of any class, or

- (iii) the relevant company, trustee or general partner in relation to any fund in respect of which a certificate has been granted,  
to wind up the affairs of the fund or of the company, trust or partnership, in accordance with such procedures and directions as may be specified in the direction, which may provide for the appointment of a person to take possession and control of documents, records, assets and property belonging to or in the possession or control of the functionary, fund service provider, company, trustee or general partner;
  - (g) prohibit the publication or making available of a particular prospectus or any other form of promotion of a collective investment fund or of a fund of any class; or
  - (h) require that any particular prospectus or other form of promotion of a collective investment fund or of a fund of any class be modified in a specified manner.
- (3) A direction under this Article may be of unlimited duration or of a duration specified in the notice of the direction.
  - (4) The power to give directions under this Article shall include the power by direction to vary any direction, as well as the power to issue further directions.
  - (5) Any person to whom a direction is given under paragraph (1) may apply to the Commission to have it withdrawn or varied and the Commission shall withdraw or vary the direction in whole or in part if it considers that there are no longer any grounds under paragraph (1)(a) to (e) that justify the direction or part of the direction concerned.
  - (6) If the Commission refuses an application under paragraph (5), or grants such an application only in part, it shall give notice in writing of that fact to the applicant.
  - (7) A person who fails to comply with a direction in respect of which notice is given under paragraph (1) to the person shall be guilty of an offence and liable to imprisonment for a term of 2 years or to a fine.
  - (8) A person who allows an individual to perform a function, engage in employment or hold a position where the person knows that such performance, engagement or holding is in contravention of a direction that makes a requirement referred to in paragraph (2)(d) shall be guilty of an offence and liable to a term of imprisonment for 2 years and a fine.<sup>92</sup>
  - (9) The record of the conviction of a person for an offence under paragraph (7) or (8) is admissible in civil proceedings as evidence of the facts constituting the offence.<sup>93</sup>

## 14 Prospectuses

- (1) The Minister may, on the recommendation of the Commission, by Order, prohibit, restrict or control the promotion by or on behalf of any person, of collective investment funds, or any class of such funds.<sup>94</sup>

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- (2) Without prejudice to the generality of paragraph (1), or otherwise, Orders made under this Article may –
- (a) require functionaries of collective investment funds or any fund service provider in relation to an unclassified fund –
    - (i) to publish or make available to the public on request prospectuses containing such information about the funds and complying with such requirements as are prescribed,
    - (ii) to provide for such a prospectus to contain such further information as is necessary to give investors an informed assessment of any investment proposed in the prospectus,
    - (iii) to publish or make available a revised or further prospectus if –
      - (A) there is a significant change affecting any matter contained in a prospectus previously published or made available, or
      - (B) a significant new matter arises, the inclusion of information in respect of which would have been required if it had arisen when the previous prospectus was prepared;
  - (b) prohibit the issue of prospectuses unless they have been filed with, or filed and approved by, the Commission;
  - (c) provide for the payment, by the person who is treated by the Order as being responsible for the prospectus, of compensation to any person who has become or agreed to become a participant in the fund and suffered loss as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required under the Order to be included;
  - (d) provide for exemptions of any persons or class of persons from compliance with such an Order, or a particular provision thereof;
  - (e) provide generally for carrying such Orders into effect.<sup>95</sup>
- (3) Orders made under this Article shall not affect any liability which any person may incur apart from such an Order.

## **15 Codes of practice<sup>96</sup>**

- (1) The Commission may, after consultation with such persons as appear to be representative of the interests concerned –
- (a) prepare a code setting out the principles and detailed requirements that must be complied with in respect of –
    - (i) any function of a functionary in relation to a collective investment fund,
    - (ii) any certified fund, or
    - (iii) any provision of this Law or any Regulations or Order made under it; and

- (b) revise any such code by revoking, varying, amending or adding to the provisions of the code.<sup>97</sup>
- (2) The Commission shall ensure that a code of practice is printed and available to the public in Jersey, and such a code may be made available by being put on sale at such price as the Commission considers reasonable.
- (3) The contravention of a code of practice –
  - (a) may lead the Commission to exercise its powers under this Law or any other enactment applicable to such contravention; but
  - (b) otherwise does not of itself render a person liable to proceedings of any kind or invalidate any transaction.<sup>98</sup>
- (4) Subject to Article 7(5), in any proceedings under this Law or otherwise, a code of practice shall be admissible in evidence if it appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question.
- (5) A copy certified in writing on behalf of the Commission to be an accurate copy of a code of practice or any part of such a code shall be admissible in all legal proceedings as of equal validity with the original and as evidence of any fact stated in it of which direct oral evidence would be admissible.
- (6) Where a document purports on its face to be a copy of a code of practice or part of such a code, certified in accordance with paragraph (5), it shall be unnecessary for the purposes of paragraph (5) to prove the official position or handwriting of the person signing on behalf of the Commission.
- (7) In paragraph (1), references to the Commission preparing a code include references to the Commission adopting, with or without modifications, a code prepared by any other person, whether within or outside Jersey.

## **16 Offences and penalties**

- (1) Any person who knowingly or recklessly provides the Commission or any other person entitled to information under this Law with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided –
  - (a) in purported compliance with a requirement imposed under this Law or any Order made thereunder;
  - (b) otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Commission for the purpose of carrying out its functions under this Law.<sup>99</sup>
- (2) Any person who knowingly or recklessly provides the Commission or any other person with information that is false or misleading in a material particular shall be guilty of an offence if the information is provided in

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connection with an application for a permit or certificate under this Law.<sup>100</sup>

- (3) Any person who, with intent to avoid detection of the Commission of an offence under this Law, removes out of the jurisdiction, destroys, conceals or fraudulently alters any documents, or causes or permits the removal, destruction, concealment or fraudulent alteration of any documents, shall be guilty of an offence.<sup>101</sup>
- (4) A holder of a permit or a fund service provider in relation to a certified fund shall be guilty of an offence if that person fails to provide the Commission with any information in that person's possession knowing or having reasonable cause to believe that –
  - (a) the information is relevant to the exercise by the Commission of its functions under this Law in relation to that person; and
  - (b) the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance for the exercise of those functions in relation to that person.<sup>102</sup>
- (5) The reference in paragraph (4) to a holder of a permit includes a reference to any person who appears to the Commission to be acting or to have acted in contravention of the provisions of Article 5(1) or (2).<sup>103</sup>
- (5A) The reference in paragraph (4) to a fund service provider in relation to a certified fund includes a reference to any person who appears to the Commission to be acting or to have acted in contravention of Article 8.<sup>104</sup>
- (6) Any person who contravenes any provision of an Order made under this Law, other than an Order made under Article 32(4) shall be guilty of an offence.<sup>105</sup>
- (7) Any person guilty of an offence under this Law for which no special penalty is provided shall be liable to a fine or to imprisonment for a term not exceeding 5 years or to both such fine and such imprisonment.<sup>106</sup>
- (8) Where a person continues to fail to comply with a requirement imposed under Article 9 or continues to obstruct a person exercising powers under paragraph (4) of that Article or Article 22(6) after being convicted of that failure or obstruction, that person shall be guilty of a further offence and liable to a fine for each day on which the failure or obstruction so continues or to imprisonment for a term not exceeding 5 years or to both such fine and such imprisonment.<sup>107</sup>

## **17 Public statement<sup>108</sup>**

- (1) The Commission may issue a public statement concerning a person if that person appears to the Commission to have contravened any of the following –
  - (a) Article 5;
  - (b) Article 7;
  - (c) Article 8;

- (d) Article 8B;
  - (e) Article 10;
  - (f) Article 12C;
  - (g) Article 12D;
  - (h) Article 13;
  - (i) Article 16;
  - (j) a Regulation, or an Order, made under this Law.
- (2) The Commission may issue –
- (a) a public statement with respect to, or setting out, any direction that the Commission has given under Article 13;
  - (b) a public statement concerning a person if that person appears to the Commission to have contravened a code of practice;
  - (c) a public statement concerning –
    - (i) a holder of a permit or certificate holder, or
    - (ii) a person in respect of whom it appears to the Commission that he or she is holding, or has held, himself or herself out, whether in Jersey or in a country or territory outside Jersey, as being a functionary of a collective investment fund, a fund service provider in relation to an unclassified fund, a holder of a permit or a certificate holder,if it appears to the Commission to be desirable to issue the statement –
    - (A) in the best interests of existing or potential participants in a relevant collective investment fund or in relevant funds of any class, or
    - (B) in the best interests of the public;
  - (d) a public statement indicating that a collective investment fund that is being held out to be a certified fund or a recognized fund is not such a fund.<sup>109</sup>

### **17A Notice of public statement<sup>110</sup>**

- (1) If a public statement identifies any person who holds a permit or is a certificate holder, the Commission shall serve notice on the person.
- (2) If a public statement identifies any person who does not hold a permit and is not a certificate holder, and at any time before the Commission issues the public statement it is reasonably practicable for the Commission to serve notice on the person, the Commission shall do so.
- (3) A notice under paragraph (1) or (2) shall –
  - (a) give the reasons for issuing the statement;
  - (b) give the proposed or actual date of issue of the statement;
  - (c) contain a copy of the statement;
  - (d) give particulars of the right of appeal under Article 17C in respect of the statement; and



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- (e) if the statement is issued, in accordance with a decision under Article 17B(3), before the date specified in Article 17B(1) in relation to the statement, give the reasons for issuing it before that day.
  - (4) Paragraph (3) shall not require the Commission –
    - (a) to specify any reason that would in the Commission’s opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
    - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.
  - (5) In this Article and Articles 17B and 17C, a reference to the identification of a person in a public statement does not include the identification, in the statement, of the Commission or of any other person in their capacity of exercising functions under this Law.

### **17B Notice period<sup>111</sup>**

- (1) If service is required under Article 17A(1) or (2) in relation to a public statement, the Commission shall not issue the public statement earlier than the expiration of one month following the date of the last such service in relation to the public statement.
- (2) Paragraph (1) shall not apply if –
  - (a) each of the persons identified in the relevant public statement agrees with the Commission that the statement may be issued on a date earlier than the date that would apply under that paragraph; and
  - (b) the statement is in fact issued on or after the earlier date.
- (3) Paragraph (1) shall not apply if –
  - (a) the Commission decides on reasonable grounds that the interests of –
    - (i) existing or potential participants in a collective investment fund,
    - (ii) existing or potential participants in funds of any class of collective investment fund, or
    - (iii) the public,in the issue of the relevant public statement on a date earlier than the date that would apply under that paragraph outweighs the detriment to the persons identified in the statement, being the detriment attributable to that earliness; and
  - (b) the statement is in fact issued on or after the earlier date.<sup>112</sup>
- (4) In making a decision under paragraph (3), the Commission is not prevented from choosing as the date of issue of a public statement the date of service (if any) of notice of the statement.
- (5) Despite this Article, if an appeal is made to the Court under Article 17C(1), and the Court orders that the statement not be issued

before any specified date or event, the Commission shall not issue the statement before the date or event so specified.

- (6) In a case to which paragraph (1) applies, if an appeal is made under Article 17C(2) to the Court against a decision to issue a public statement, the Commission shall not issue the statement before the day on which that appeal is determined by the Court or withdrawn.

### **17C Appeals and orders about public statements<sup>113</sup>**

- (1) A person aggrieved by a decision of the Commission under Article 17B(3) may appeal to the Court, in accordance with this Article, against the decision.
- (2) A person aggrieved by a decision of the Commission to issue a public statement that identifies the person may appeal to the Court, in accordance with this Article, against the decision.
- (3) An appeal under paragraph (2) may be made only on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.
- (4) A person's appeal under this Article shall be lodged with the Court no later than –
- (a) if notice is served on the person under Article 17A in relation to the public statement, the day that is one month after the date of the last such service on the person in relation to the public statement; or
  - (b) if no such notice is served on the person, the day that is one month after the issue of the public statement.
- (5) Nothing in paragraph (4) prevents the lodging of an appeal before a notice is served or a public statement is issued.
- (6) On an appeal under this Article, the Court may make such interim or final order as it thinks fit, including an order that the Commission not issue the relevant public statement or, if the public statement has been issued, that the Commission issue a further public statement to the effect set out in the order or stop making the statement available to the public.

### **18 Legal proceedings<sup>114</sup>**

- (1) Where an offence under this Law committed by –
- (a) a holder of a permit or former holder of a permit;
  - (b) a fund service provider in relation to a certified fund or a former fund service provider in relation to a certified fund;
  - (c) a person to whom a certificate has been granted; or
  - (d) a person acting in contravention of Article 5 or 8,
- is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a person who is or was a principal person in relation to that offender, that principal person shall be

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guilty of the offence and liable in the same manner as the offender to the penalty provided for that offence.<sup>115</sup>

- (2) Where an offence under this Law committed by a limited liability partnership or company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the company; or  
(b) any person purporting to act in any such capacity,

the person shall also be guilty of the offence and liable in the same manner as the partnership or company to the penalty provided for that offence.<sup>116</sup>

- (3) Where the affairs of a company are managed by its members, paragraph (2) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the company.<sup>117</sup>

- (4) For the purposes of this Article, a person shall be deemed to be a director of a company if the person occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the company or any of them act:

Provided that a person shall not, by reason only that the directors of a company act on advice given by the person in a professional capacity, be taken to be a person in accordance with whose directions or instructions those directors act.

- (5) No proceedings for an offence under this Law shall be instituted except by or with the consent of the Attorney General.

## **19 Aiding and abetting<sup>118</sup>**

- (1) Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

- (2) Nothing in this Article affects the operation of Article 18(1), (2) or (3).

## **20 Regulations and Orders<sup>119</sup>**

- (1) The Minister may, on the recommendation of the Commission, by Order make provision for the purpose of carrying this Law into effect and in particular, but without prejudice to the generality of the foregoing and subject to Article 4(3), for prescribing any matter which is to be prescribed under this Law.<sup>120</sup>

- (2) <sup>121</sup>

- (3) Regulations or an Order made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States or Minister (as the case requires) to be necessary or expedient for the purposes of the Regulations or Order.<sup>122</sup>
- (4) The power to make Orders, or the power to make Regulations, under this Law may be exercised –
  - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
  - (b) so as to make, as respects the cases in relation to which it is exercised –
    - (i) the full provision to which the power extends or any lesser provision (whether by way of exception or otherwise),
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of the Order or Regulations,
    - (iii) any such provision either unconditionally or subject to any specified condition.<sup>123</sup>

## **21 Service of notices<sup>124</sup>**

- (1) No notice or other document required by this Law to be given to the Commission shall be regarded as so given until it is received.
- (2) Subject to paragraph (1), any notice or other document required or authorized by or under this Law to be given to the Commission may be given by facsimile, electronic transmission or by any similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
- (3) Any notice, direction or other document required or authorized by or under this Law to be given to or served on any person other than the Commission may be given or served on the person in question –
  - (a) by delivering it to the person;
  - (b) by leaving it at the person's proper address;
  - (c) by sending it by post to the person at that address; or
  - (d) by sending it to the person at that address by facsimile, electronic transmission or other similar means that produces a document containing the text of the communication in legible form or is capable of doing so.
- (4) Any such notice, direction or other document may –
  - (a) in the case of a company incorporated in Jersey, be served by being delivered to its registered or principal office;
  - (b) in the case of a partnership, company incorporated outside Jersey or unincorporated association, be given to or served on a person who is a principal person in relation to it, or on the secretary or

other similar officer of the partnership, company or association or any person who purports to act in any such capacity, by whatever name called, or on the person having the control or management of the partnership business, as the case may be, or by being served on the person or delivered to the person's registered or administrative office.

- (5) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954<sup>125</sup> in its application to this Article, the proper address of any person to or on whom a notice, direction or other document is to be given or served by post shall be the person's last known address, except that –
- (a) in the case of a company incorporated in Jersey, or its secretary, clerk or other similar officer or person, it shall be the address of the registered or principal office of the company in Jersey; and
  - (b) in the case of a partnership, or a person who is a principal person in relation to a partnership, it shall be that of its principal office in Jersey.
- (6) If the person to or on whom any notice, direction or other document referred to in paragraph (3) is to be given or served has notified the Commission of an address within Jersey other than the person's proper address within the meaning of paragraph (5), as the one at which the person or someone on the person's behalf will accept documents of the same description as that notice, direction or other document, that address shall also be treated for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 as the person's proper address.

## **22 Investigation by Commission<sup>126</sup>**

- (1) Where, in the opinion of the Commission such action is advisable for the protection of the public, or of participants or potential participants in a collective investment fund, the Commission may appoint an inspector to investigate the affairs of all or any of the holders of permits relating to the collective investment fund, any fund service provider in relation to a certified fund or a person to whom a certificate has been granted, and to make such further enquiries as the inspector may consider necessary.<sup>127</sup>
- (2) An inspector appointed under this Article may examine under oath –
- (a) the holder of a permit;
  - (b) a fund service provider in relation to a certified fund;
  - (c) a certificate holder;
  - (d) a principal person in relation to, or fund service provider, employee, banker, auditor or legal adviser of, the holder of a permit, a certified fund, or a fund service provider in relation to a certified fund;
  - (e) any person nominated or approved to make a report in respect of the holder of a permit, a certified fund, or a fund service provider in relation to a certified fund; and

- 
- (f) any other person who appears to be in possession of relevant information,
- for the purpose of obtaining any information that the inspector considers necessary for the purpose of the inspector's investigation.<sup>128</sup>
- (3) References in paragraphs (1), (2) and (6) –
- (a) to a holder of a permit include references –
- (i) to a former holder of a permit,
- (ii) to any person who the Commission has reasonable cause to believe has committed an offence under Article 10, and
- (iii) to any person who appears to the Commission to be acting or to have acted in contravention of Article 5; and
- (b) to a fund service provider in relation to a certified fund include references –
- (i) to a former fund service provider in relation to a certified fund, and
- (ii) to any person who appears to the Commission to be acting or to have acted in contravention of Article 8.<sup>129</sup>
- (4) Subject to paragraph (5), when an inspector is appointed under this Article, it is the duty of all persons who are liable to be examined under oath under paragraph (2) to give the inspector all assistance in connection with the investigation which they are reasonably able to give.<sup>130</sup>
- (5) A person liable to be examined under oath under paragraph (2) is not required to disclose any information which the person is entitled to refuse to disclose on grounds of legal professional privilege except that a lawyer may be required to disclose the name and address of the lawyer's client.<sup>131</sup>
- (6) An inspector appointed under this Article may, at a reasonable time, having given prior written notice of intention to do so, and on producing if required evidence of the inspector's authority, enter any premises occupied by the holder of a permit, a fund service provider in relation to a certified fund or any other person referred to in paragraph (2) or any other premises where information is kept by such a person, for the purpose of carrying out the inspector's duties under this Article.<sup>132</sup>
- (7) Any person who obstructs a person exercising powers under paragraph (6) shall be guilty of an offence.<sup>133</sup>
- (8) If any person –
- (a) refuses to produce any document which it is that person's duty under Article 9 to produce;
- (b) refuses to attend before an inspector when required to do so; or
- (c) refuses to answer any question put to that person by an inspector with respect to the affairs of the functionary,
- the inspector may certify the refusal to the Court.<sup>134</sup>
- (9) The Court may thereupon enquire into the case; and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in

defence, the Court may punish the offender in like manner as if that person had been guilty of contempt of court.<sup>135</sup>

- (10) A person convicted on a prosecution instituted as a result of an investigation under this Article may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified by the Court.<sup>136</sup>
- (11) For the purposes of paragraph (10), the expenses of the investigation shall include such sums as the Commission may determine in respect of the cost of staff and overheads.<sup>137</sup>
- (12) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against that person in any criminal proceedings except proceedings under paragraph (7) of this Article or Article 16(1), (4) or (8).<sup>138</sup>
- (13) Nothing in paragraph (12) shall be construed as preventing the use of a statement in any enquiry under paragraph (9).<sup>139</sup>
- (14) This Article is in addition to and does not derogate from Article 9.

### **23 Obstruction of investigations<sup>140</sup>**

- (1) It shall be an offence for a person who knows or suspects –
  - (a) any information or document is, or is likely to be, required under Article 9; or
  - (b) that an investigation is being or is likely to be carried out under Article 22,  
  
to falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of any information, or document, which that person knows or suspects would be required under Article 9 or relevant to an investigation under Article 22.<sup>141</sup>
- (2) It shall be a defence for a person to prove that he or she had no intention of concealing facts disclosed by the information or documents from a person requiring or likely to require such information or documents under Article 9 or carrying out or likely to be carrying out an investigation under Article 22.<sup>142</sup>

### **24 Entry and search of premises<sup>143</sup>**

- (1) If the Bailiff is satisfied by information on oath that there is reasonable cause to suspect that –
  - (a) if a notice were given under Article 9 it would not be complied with;
  - (b) if any person were required to produce documents under Article 9, those documents would be likely to be removed, tampered with or destroyed;
  - (c) a specified person has failed in any respect to comply with a notice or requirement referred to in sub-paragraph (a) or (b);

- (d) a specified person has not provided complete information or documents in response to a notice or requirement referred to in sub-paragraph (a) or (b);
  - (e) an officer, or agent, within the meaning of Article 9 has been or may be obstructed in exercising a power under Article 9(4); or
  - (f) an inspector appointed under Article 22 has been or may be obstructed in exercising a power under Article 22(6),
- the Bailiff may grant a warrant under this paragraph.<sup>144</sup>
- (2) A warrant under paragraph (1) may authorize any police officer, together with any other person named in the warrant –
    - (a) to enter any premises specified in the warrant, using such force as is reasonably necessary for the purpose;
    - (b) to search the premises and obtain information or take possession of any documents appearing to be documents of a type referred to in any of the provisions mentioned in paragraph (1) or information relating to matters referred to therein or which otherwise appear to be relevant to the investigation of any offence under this Law, or to take, in relation to any documents, any other steps which may appear to be necessary to preserve them or to prevent interference with them;
    - (c) to take copies of or extracts from such documents and to require the person who had possession of them or any person who appears to be in possession of relevant information to provide an explanation of them;
    - (d) to require any person named in the warrant to answer questions relevant for determining any matter in connection with this Law; and
    - (e) if the documents are not provided, to require any person appearing to be in possession of relevant information to state, to the best of his or her knowledge and belief, where they are.<sup>145</sup>
  - (3) A warrant under paragraph (1) shall continue in force until the end of the period of one month beginning with the date on which it was issued.
  - (4) Any documents taken under paragraph (2) may be retained –
    - (a) for a period of one year; or
    - (b) if, within that period, proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.<sup>146</sup>
  - (5) A person who requires for the purposes of his or her business any documents taken under paragraph (2) may request the person in whose custody they are retained to furnish copies of them and the person in whose custody they are retained shall furnish such copies as soon as possible.<sup>147</sup>
  - (6) Any person who obstructs the exercise of any power conferred by a warrant under this Article or fails to comply with a requirement imposed on him or her by virtue of paragraph (2)(c), (d) or (e) shall be guilty of an offence.



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- (7) Where any person from whose premises documents are taken under paragraph (2) claims a lien on any such documents, the possession of such documents by the officer or person concerned and by anyone to whom he or she passes them shall be without prejudice to the lien.<sup>148</sup>
  - (8) Nothing in this Article shall require the disclosure or production by a person of information, or documents which that person would in an action in the Court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the Court except, if he or she is a lawyer, the name and address of his or her client.<sup>149</sup>
  - (9) A statement made by a person in compliance with a requirement imposed by virtue of this Article may not be used by the prosecution in evidence against him or her in any criminal proceedings except proceedings under paragraph (6) of this Article or Article 16(1), (4) or (8).

## **25 Co-operation with relevant supervisory authority<sup>150</sup>**

- (1) The following powers may be exercised (by the officer or person specified in the relevant provision) in order to assist a relevant supervisory authority –
  - (a) the power to refuse to grant a permit under Article 7(1) or to cancel a permit under paragraph (7) of that Article;
  - (b) the power to impose conditions on the grant of a permit under Article 7(1) or to vary such conditions or attach a new condition under paragraph (3) of that Article;
  - (ba) the power to refuse to grant a certificate under Article 8B(1) or to cancel a certificate under Article 8B(10);
  - (bb) the power to impose conditions on the grant of a certificate under Article 8B(2) or to vary such conditions or attach a new condition under Article 8B(4);
  - (c) the powers relating to information and documents under Article 9;
  - (ca) the power to give a direction under Article 13;
  - (d) the powers under Article 22;
  - (e) the powers under Article 24;
  - (f) on the application of the Commission, the powers under Article 34;
  - (g) subject to Article 30, communication by the Commission to the relevant supervisory authority of information that is in the possession of the Commission, whether or not as a result of the exercise of any of the above powers.<sup>151</sup>
- (2) The Commission shall not exercise the power referred to in paragraph (1)(g) unless satisfied that the relevant supervisory authority will treat the information communicated with appropriate confidentiality and that –
  - (a) the power is exercised in order to assist the authority in the exercise of its supervisory functions; or

- (b) the exercise of the power has been requested by the authority and requested only for the purposes of obtaining assistance for the authority in the exercise of one or more of its supervisory functions.
- (3) The other powers referred to in paragraph (1) shall not be exercised by virtue of this Article unless the Commission is satisfied that the exercise has been requested by the relevant supervisory authority and requested only for the purposes of obtaining assistance for the authority in the exercise of one or more of its supervisory functions.
- (4) In deciding whether to exercise a power by virtue of this Article, the following factors (among others) may be taken into account –
- (a) whether corresponding assistance would be given in that country or territory to the Commission;
  - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey or involves the assertion of a jurisdiction not recognized by Jersey;
  - (c) the seriousness of the case and its importance in Jersey and whether the assistance could be obtained by other means;
  - (d) whether it is otherwise appropriate in the public interest to give the assistance.
- (5) The exercise of powers by virtue of this Article may be refused unless the relevant supervisory authority undertakes to make such contribution towards the costs of its exercise as the Commission considers appropriate.
- (6) For the purposes of this Article –
- (a) a reference –
    - (i) in Article 9 to a contravention of Article 5 or of Article 8 or of Article 10, or
    - (ii) in Article 22(3) to an offence under Article 10 or to a contravention of Article 5 or 8,shall include a reference to a contravention (committed at any time, including a time before the enactment of this Law) of a provision of a law of a country or territory outside Jersey, which provision the Commission reasonably considers to be similar to Article 5, 8 or 10; and
  - (b) a reference in Article 24(4) to proceedings shall include a reference to proceedings outside Jersey.<sup>152</sup>
- (7) For the purposes of this Article, a reference (however expressed or implied) in Article 5, 8 or 10 (or in any provision necessary for the interpretation of that Article) to Jersey, or to any class of person, any qualification or any provision, shall be construed, in the application of that Article to a contravention of a law of a country or territory outside Jersey, as a reference to that country or territory, or to an equivalent class of person, qualification or provision, in terms of the law of that country or territory.<sup>153</sup>
- (8) The exercise of a power under any provision shall be no less an exercise of that power under that provision because it is exercised by virtue of this

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Article, and this Law (and any other law that applies when a power is exercised directly under that provision) applies also when that power is exercised by virtue of this Article.

## **26 Restriction on disclosure of information<sup>154</sup>**

- (1) Except as provided in paragraphs (2) and (3) and in Articles 27 to 29 –
  - (a) no person who under or for the purposes of this Law receives information relating to the business or other affairs of any person; and
  - (b) no person who obtains any such information directly or indirectly from a person who has received it as aforesaid,shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.
- (2) This Article does not apply to information which –
  - (a) at the time of the disclosure, is or has already been made available to the public from other sources; or
  - (b) is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (3) This Article does not apply to information which is communicated to a relevant supervisory authority under Article 25(1)(g).
- (4) Any person who discloses information in contravention of this Article shall be guilty of an offence.

## **27 Disclosure facilitating discharge of functions by Commission<sup>155</sup>**

- (1) Article 26 does not preclude the disclosure of information by or to any person in any case in which disclosure is for the purpose of enabling or assisting any of the following –
  - (a) the Commission or any person acting on its behalf;
  - (b) a person appointed under an enactment by any of the following –
    - (i) the Commission,
    - (ii) the Court, on the application of the Commission,
    - (iii) a Minister, where that Minister and the Commission are each specified in that enactment as having power to appoint that person,to discharge the Commission's functions or that person's functions under this Law or under any other enactment.<sup>156</sup>
- (2) Article 26 does not preclude the disclosure of information by the Commission to the auditor of –
  - (a) a permit holder or a certificate holder;
  - (b) a former permit holder or a former certificate holder; or

(c) a person who appears to the Commission to be acting or to have acted in contravention of Article 5 or Article 8,

if it appears to the Commission that disclosing the information would be in the interests of participants or potential participants in a collective investment fund or funds of any class of collective investment fund.<sup>157</sup>

(3) <sup>158</sup>

## 28 Disclosure to public persons and bodies<sup>159</sup>

(1) Article 26 does not preclude the disclosure of information by the Commission to –

- (a) the Viscount;
- (b) the Comptroller and Auditor General for the purpose of enabling or assisting the carrying out of any of the Comptroller and Auditor General's functions in relation to the Commission;
- (c) any person for the purpose of enabling or assisting that person to exercise that person's statutory functions in relation to any person or class of person in respect of whom the Commission has or had statutory functions; or
- (d) any person for the purpose of enabling or assisting that person to exercise that person's statutory control functions in relation to any person or class of person in respect of whom the Commission does not have statutory functions.<sup>160</sup>

(1A) In paragraph (1)(d), "statutory control functions" means functions conferred by or under an enactment on any person which requires or enables that person to issue a licence, register, or give consent or any other form of authorization or permission to or in respect of any person or class of persons, including any ancillary functions related thereto, for such purposes as may be prescribed or specified (as the case may be) under that enactment.<sup>161</sup>

(2) Article 26 does not preclude the disclosure of information for the purpose of enabling or assisting a relevant supervisory authority to exercise any of its supervisory functions.

(3) Without prejudice to the generality of paragraph (1)(c), Article 26 does not preclude the disclosure of information by the Commission to the Office of the Financial Services Ombudsman or to an Ombudsman, within the meaning of the Financial Services Ombudsman (Jersey) Law 2014<sup>162</sup> –

- (a) to comply with a duty of the Commission under Article 20 of that Law; or
- (b) for the purpose of enabling or assisting that Office or Ombudsman to exercise any function under that Law (including the raising of a levy).<sup>163</sup>

## 29 Other permitted disclosures<sup>164</sup>

(1) Article 26 does not preclude the disclosure of information –

- 
- (a) with a view to the investigation of a suspected offence or the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Law or not;
    - (b) in connection with any other proceedings arising out of this Law;
    - (c)
    - (d) to a person by the Commission showing whether or not any person holds or formerly held a permit or certificate under this Law, including any conditions to which that permit or certificate is or was formerly subject under Article 7 or Article 8B as the case may be.<sup>165</sup>
  - (2) Article 26 does not preclude the disclosure by the Commission to the Attorney General or to a police officer of –
    - (a) information obtained by virtue of any of Articles 9, 22 or 24; or
    - (b) information in the possession of the Commission as to any matter in relation to which the powers conferred by any of those Articles are exercisable.<sup>166</sup>
  - (3) Information disclosed under paragraph (2) may only be disclosed by the Attorney General or a police officer for the purposes of an investigation into a suspected offence in Jersey or a prosecution in Jersey or, at the discretion of the Attorney General, a suspected offence or prosecution in a country or territory outside Jersey.<sup>167</sup>
  - (4) Article 26 does not preclude the disclosure of information by the Commission to any person or body responsible for a compensation scheme in relation to one or more collective investment funds (whether in Jersey or in a country or territory outside Jersey) if –
    - (a) it appears to the Commission that disclosing the information would enable or assist the recipient of the information or the Commission to discharge its functions; and
    - (b) the recipient of the information gives to the Commission prior to disclosure a written undertaking that the information will not be further disclosed without the prior consent of the Commission.<sup>168</sup>
  - (5) Article 26 does not preclude the disclosure of information by the Commission to any person acting on behalf of an international body or organization where that body's or organization's functions include the assessment of Jersey's compliance with international standards relating to regulation of the financial sector and the disclosure is for the purpose of enabling or assisting that body or organization to discharge those functions.<sup>169</sup>
  - (6) Article 26 does not preclude disclosure of information by –
    - (a) the Commission;
    - (b) a person appointed under an enactment by any of the following –
      - (i) the Commission,
      - (ii) the Court, on the application of the Commission,

- (iii) a Minister, where that Minister and the Commission are each specified in that enactment as having power to appoint that person,

to any person or body responsible for setting standards of conduct for any profession where that person or body has powers to discipline persons who fail to meet those standards if it appears to the Commission or the appointed person that disclosing the information would enable or assist the person or body responsible for setting standards to discharge its functions in relation to a person who fails, or is alleged to have failed, to meet those standards.<sup>170</sup>

- (7) Subject to paragraphs (8) to (10), Article 26 does not preclude the disclosure of information by the Commission to any of the following organizations or persons –
- (a) the ESAs;
  - (b) the ESRB; or
  - (c) a supervisor of a securities market.<sup>171</sup>
- (8) The Commission shall not disclose information under paragraph (7) unless satisfied that –
- (a) the purpose of the disclosure is in order to assist the relevant organization or person to whom it is disclosed, in the exercise of any of its functions; and
  - (b) that organization or person will treat the disclosed information with appropriate confidentiality.<sup>172</sup>
- (9) In deciding whether to disclose information under paragraph (7), the Commission may take the following factors (among others) into account –
- (a) whether corresponding disclosure of information would be given by the relevant organization or person, if such information were requested by the Commission;
  - (b) whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey;
  - (c) the seriousness of the case and its importance in Jersey;
  - (d) whether the information could be obtained by other means; and
  - (e) whether it is otherwise appropriate in the public interest to disclose the information.<sup>173</sup>
- (10) The Commission may refuse to disclose information under paragraph (7) unless the relevant organization or person undertakes to make such contribution towards the costs of the disclosure as the Commission considers appropriate.<sup>174</sup>

### **30 Attachment of conditions to disclosure<sup>175</sup>**

No information shall be disclosed under or by virtue of Article 25(1)(g), 27(1)(a), 28(1)(b), (c) or (d), or (2) or 29(5), (6) or (7) unless the Commission or person, as the case requires, making the disclosure ('the disclosing party') is satisfied that the person or body to whom or which disclosure is made complies

with or will comply with, any conditions to which the disclosing party may, in its discretion, subject such disclosure.

**30A Regulation making power to amend disclosure provisions<sup>176</sup>**

The States may by Regulations amend Articles 27, 28 and 29 by –

- (a) adding further persons or bodies to or by whom disclosure may be made and specifying in each case the purpose for which disclosure of information may be made; and
- (b) amending the circumstances in which disclosure may be made to whom or by any person or body specified in those Articles, including the purposes for which and conditions in which such disclosure may be made.

**31 Information supplied to Commission by relevant supervisory authority<sup>177</sup>**

Articles 26 to 30 apply also to information supplied to the Commission for the purposes of its functions under this Law by a relevant supervisory authority, any of the ESAs, the ESRB or a supervisor of a securities market.

**32 Communication by auditor and other persons with Commission<sup>178</sup>**

- (1) No duty to which an auditor or a person appointed to make a report as referred to in Article 9(6) may be subject shall be regarded as contravened by reason of him or her communicating in good faith to the Commission, whether or not in response to a request made by it, any information or opinion on a matter to which this Article applies and which is relevant to any function of the Commission under this Law.<sup>179</sup>
- (2) In relation to an auditor, this Article applies to a matter of which the auditor becomes aware in his or her capacity as such and which relates to the business or affairs of a holder of a permit, former holder of a permit, a person to whom a certificate has been granted, a fund service provider in relation to a certified fund or a former fund service provider in relation to a certified fund, or the business or affairs of a collective investment fund, as the case may be, or any holding company or subsidiary in relation to it.<sup>180</sup>
- (3) In relation to a person appointed to make a report as referred to in Article 9(6), this Article applies to any matter of which that person becomes aware in his or her capacity as the person making the report and which relates to the business or affairs of the holder of a permit, a former holder of a permit, a person to whom a certificate has been granted, a fund service provider in relation to a certified fund, or a former fund service provider in relation to a certified fund, in relation to whom the report is made.<sup>181</sup>
- (4) The Minister may by Order, on the recommendation of the Commission given after the Commission has consulted with such persons as appear to it to represent the interests of the persons referred to in paragraph (1),

holders of permits, certified funds and fund service providers in relation to certified funds, specify circumstances in which the persons referred to in paragraph (1) shall be required to communicate any information or opinion to the Commission on a matter to which this Article applies, and which is relevant to any function of the Commission under this Law.<sup>182</sup>

- (5) A person who fails to comply with an Order made under paragraph (4) shall be guilty of an offence and liable to a fine or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.
- (6) In this Article, “auditor” means an auditor of –
- (a) a holder of a permit or a former holder of a permit;
  - (b) a certified fund, a former certified fund, a fund service provider in relation to a certified fund or a former fund service provider in relation to a certified fund; or
  - (c) a collective investment fund,
- and includes –
- (d) a person who was the auditor of a holder of a permit or former holder of a permit at any time during the period the permit was held; and
  - (e) a person who was the auditor of a person to whom a certificate has been granted, a fund service provider in relation to a certified fund or a former fund service provider in relation to a certified fund at any time during the period in which the certificate in relation to the fund was in force.<sup>183</sup>

### **33 Register of holders of permits and certified funds<sup>184</sup>**

- (1) The Commission shall keep a register of –
- (a) persons to whom permits have been granted; and
  - (b) certified funds.<sup>185</sup>
- (2) The register referred to in paragraph (1) shall be in such form and contain such particulars as the Commission may from time to time determine.
- (3) The register referred to in paragraph (1) shall be kept in such place as the Commission may determine, and any person shall be permitted to inspect the register during ordinary office hours, and to take copies of any entry in it.

### **34 Applications to Court<sup>186</sup>**

- (1) <sup>187</sup>
- (2) <sup>188</sup>
- (3) <sup>189</sup>
- (4) <sup>190</sup>
- (5) If it appears to the Commission –
- (a) that it is desirable in the interest of the participants or potential participants in a collective investment fund; or



- (b) that a functionary or fund service provider in relation to an unclassified fund has failed to comply with any provision of this Law, or of any Regulation or Order made or permit granted, or with any direction given, under this Law, or in purported compliance with any such provision has furnished to the Commission false, inaccurate or misleading information,

the Commission may apply to the Court for an order removing the functionary or fund service provider in relation to an unclassified fund and replacing the functionary or fund service provider in relation to an unclassified fund with a person nominated by the Commission and may also apply for an order that the person nominated by the Commission procures the winding up of the collective investment fund.<sup>191</sup>

- (6) On an application under paragraph (5) the Court may make such order as it thinks fit, which may include provisions to facilitate the removal or replacement of a functionary or fund service provider in relation to an unclassified fund and the winding up of the collective investment fund.<sup>192</sup>
- (7) The Commission shall give written notice of the making of an application under paragraph (5) to the functionaries of the collective investment fund or any fund service provider in relation to an unclassified fund and take such steps as it considers appropriate for bringing the making of the application to the attention of participants in the collective investment fund.<sup>193</sup>
- (8) If on the application of the Commission the Court is satisfied –
- (a) that there is a reasonable likelihood that a person will fail to comply with a provision of this Law, or of any Regulation or Order made, or permit or certificate granted, or conditions prescribed or attached to a permit or certificate, or with any direction given, under this Law;
- (b) that a person has failed to comply with any such provision or direction and that there is a reasonable likelihood that the failure will continue or be repeated; or
- (c) that any person has failed to comply with any such provision or direction and that there are steps that could be taken for remedying the failure,

the Court may make an order preventing the failure or requiring that person and any other person who appears to the Court to have been knowingly concerned in the failure to take such steps as the Court may direct to remedy it.<sup>194</sup>

- (9) If on the application of the Commission the Court is satisfied –
- (a) that profits have accrued to a person as a result of that person's failure to comply with any provision of this Law, or of any Regulation or Order made, or permit or certificate granted, or with any direction given, under this Law; or
- (b) that one or more investors have suffered loss or been otherwise adversely affected as a result of that failure,

the Court may make an order requiring the person concerned to pay into Court for distribution as the Court may direct such sum as appears to the Court to be just having regard to the profits appearing to the Court to have accrued and to the extent of the loss or other adverse effect.<sup>195</sup>

- (10) On an application under paragraph (9) the Court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to that person as mentioned in paragraph (9)(a) and for determining how any amounts are to be paid or distributed under that paragraph; and the Court may require any such accounts or other information to be verified in such manner as it may direct.<sup>196</sup>
- (11) Where, on the application of the Commission, the Court is satisfied that –
- (a) the holder of a permit or a certificate holder (each referred to in this Article as “holder”) –
    - (i) is not, in terms of Article 7(6)(a) or 8B(7)(a), as the case requires, a fit and proper person to carry on business in relation to a collective investment fund, being business that the holder is purporting to carry on,
    - (ii) is not fit to carry on business in relation to a collective investment fund to the extent to which the holder is purporting to do, or
    - (iii) has, in relation to a collective investment fund, failed, or is likely to fail, to comply with a provision or direction as described in paragraph (8)(a); and
  - (b) it is desirable for the Court to act under this paragraph for the protection of participants or potential participants in that or any other collective investment fund in relation to which the holder carries on or purports to carry on business,

the Court may, as it thinks just, make an order making the holder’s business subject to such supervision, restraint or conditions from such time and for such periods as the Court may specify, and may also make such ancillary orders as the Court thinks desirable.<sup>197</sup>

- (12) If, on an application made under paragraph (11), the Court is satisfied that a holder has –
- (a) by entering into any transaction with another person, contravened Article 5 or 8;
  - (b) by entering into any transaction with another person, contravened any condition applicable to the holder (whether attached to a certificate or permit or prescribed by Order) or any direction given to the holder under Article 13;
  - (c) contravened Article 10 with the result that another person has been induced to enter into a transaction with the holder or with a third person; or
  - (d) entered into any transaction with another person who was induced to enter into the transaction as a result of the contravention of Article 10 by a third person,

the Court may order any one or more of those persons (and any other person who appears to the Court to have been knowingly concerned in the contravention) to take such steps as the Court may direct for restoring one or more of the persons to the position in which they were before the transaction was entered into.<sup>198</sup>

- (13) Without prejudice to the generality of paragraph (11) or (12), an order issued under either of those paragraphs may include a requirement that all assets, or all assets of a specified description, which, at any time while the requirement is in force when the holder carries on business relating to a collective investment fund –
- (a) belong to the holder concerned; or
  - (b) belong to persons with whom the holder is transacting business relating to a collective investment fund and that are held by or to the holder's order,

shall be transferred to and held by a person whose appointment is approved by the Court (in this Article referred to as an "appointed person").<sup>199</sup>

- (14) Where a requirement of a type referred to in paragraph (13) is imposed under this Article, it shall be the duty of the holder concerned to transfer the assets to the appointed person and to give the appointed person all such other assistance as may be required to enable the appointed person to discharge his or her functions in accordance with this requirement.<sup>200</sup>
- (15) Assets held by an appointed person in accordance with a requirement of a type referred to in paragraph (13) shall not be released or dealt with except in accordance with directions given by the Court or in such circumstances as may be specified by it.<sup>201</sup>
- (16) An order including a requirement of a type referred to in paragraph (13) may relate to assets in a country or territory outside Jersey.<sup>202</sup>
- (17) The provisions of this Article shall be without prejudice to any right of any aggrieved person to bring proceedings directly in respect of any right such person may otherwise have independently of the Commission.<sup>203</sup>

**34A Commission may apply to Court for appointment of a manager in prescribed circumstances<sup>204</sup>**

- (1) The Minister may, on the recommendation of the Commission, by Order prescribe circumstances in which the Commission may apply to the Court for the appointment by the Court of a person to manage the affairs, or any part of the affairs, of any person mentioned in paragraph (2) in so far as those affairs relate to a collective investment fund.
- (2) Those persons are –
- (a) any person granted a permit or a certificate;
  - (b) any person whom the Commission reasonably believes to be in breach of Article 5 or 8.
- (3) An Order made under paragraph (1) may contain such incidental or supplementary provisions as the Minister thinks necessary or expedient.

- (4) The Court may, on an application made to it by the Commission, in circumstances prescribed under paragraph (1), appoint, on such terms as it considers to be appropriate, a person to manage the affairs, or any part of the affairs, of any person mentioned in paragraph (2) in so far as those affairs relate to a collective investment fund.
- (5) Subject to the terms of his or her appointment, a person appointed under paragraph (4) shall have all the powers necessary to manage the affairs, or the part of the affairs, of the person in respect of whom the appointment was made in so far as they relate to a collective investment fund.

### **35 Actions for damages**

A failure to comply with such provisions of this Law, or any Regulation or Order made under it, as the States may by Regulations specify shall be actionable at the suit of a person who suffers loss as a result of the failure, subject to the defences and other incidents applying to actions for breach of statutory duty; but no such failure shall invalidate any transaction.

### **36 Limitation of liability<sup>205</sup>**

- (1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or any enactment made, or purportedly made, under this Law unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to –
  - (a) the States;
  - (b) the Minister or any person who is, or is acting as, an officer, servant or agent in an administration of the States for which the Minister is assigned responsibility or who is performing any duty or exercising any power on behalf of the Minister; and
  - (c) the Commission, any Commissioner or any person who is, or is acting as, an officer, servant or agent of the Commission or who is an inspector appointed by the Commission under Article 22 or who is performing any duty or exercising any power on behalf of the Commission.

**37** <sup>206</sup>

**38** <sup>207</sup>

### **38A Certain permits become certificates<sup>208</sup>**

- (1) An unclassified fund that immediately before this Article comes into force –
  - (a) is a company issuing units; and

- (b) holds a permit,  
shall be taken to have been granted on the day on which this Article comes into force a certificate subject to –
- (i) the conditions specified on the permit; and
  - (ii) any conditions that apply from time to time in relation to certificates in accordance with Article 8B(5).
- (2) The Commission may, without receiving an application from a person in relation to an unclassified fund, exercise in relation to the fund the Commission's powers under Article 8B and 8C as if an application had been received in relation to the fund.
- (3) A certificate granted pursuant to such an exercise shall be taken to replace a certificate taken to have been granted under paragraph (1).

### **39 Citation**

This Law may be cited as the Collective Investment Funds (Jersey) Law 1988.

**SCHEDULE**

(Article 4)

**FUNCTIONARIES****PART 1**

Functionaries are those persons referred to in Part 2 of this Schedule.

**PART 2**

<i>Group</i>	<i>Description</i>
1	Any company issuing units.
2	Manager, administrator, registrar, investment manager, investment adviser.
3	Distributor, subscription agent, redemption agent, premium receiving agent, policy proceeds paying agent, purchase agent, repurchase agent.
4	Trustee, custodian, depositary <sup>209</sup> .
5	Member of a partnership, (except a limited partner).

**PART 3**

1. In this Schedule “group” means a group of the kind specified in Part 2.
2. A reference in this Schedule to a numbered group is a reference to the group so numbered in Part 2.
3. A group or part of a group may be described in an Order or permit by reference to a group specified in Part 2.

**ENDNOTES****Table of Legislation History**

<b>Legislation</b>	<b>Year and Number</b>	<b>Commencement</b>
Collective Investment Funds (Jersey) Law 1988	L.6/1988	1 June 1988, (1 June 1989 for Article 4) (R&O.7757)
Collective Investments Funds (No. 1) (Jersey) Regulations 1990	R&O.8081	1 August 1990
Companies (Jersey) Law 1991	L.30/1991	30 March 1992 (R&O.8308)
Limited Liability Partnerships (Jersey) Law 1997	L.3/1997	9 September 1998 (R&O.9233)
Financial Services Commission (Jersey) Law 1998	L.11/1998	1 July 1998 (R&O.9238)
Collective Investment Funds (Amendment) (Jersey) Law 1998	L.23/1998	1 March 1999 (R&O.9357)
Criminal Procedure (Prescription of Offences) (Jersey) Law 1999	L.23/1999	23 July 1999
Fees (Miscellaneous Amendments and Validation) (Jersey) Law 1999	L.30/1999	5 November 1999
Collective Investment Funds (Amendment No. 2) (Jersey) Law 2000	L.21/2000	20 October 2000 (R&O.88/2000)
Collective Investment Funds (Amendment No. 3) (Jersey) Law 2002	L.4/2002	1 March 2002 (R&O.10/2002)
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	R&O.101/2003	14 October 2003
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	R&O.44/2005	9 December 2005
Financial Services Commission (Amendment No. 4) (Jersey) Law 2007	L.33/2007	24 January 2008
Collective Investment Funds (Amendment No. 4) (Jersey) Law 2008	L.14/2008	4 April 2008
Financial Services (Amendment No. 3) (Jersey) Law 2008	L.6/2008	9 April 2008 (R&O.47/2008)
Financial Regulation (Miscellaneous Provisions) (Jersey) Law 2009	L.4/2009	9 January 2009
Separate Limited Partnerships	L.6/2011	20 April 2011

<b>Legislation</b>	<b>Year and Number</b>	<b>Commencement</b>
(Jersey) Law 2011		(R&O.42/2011)
Incorporated Limited Partnerships (Jersey) Law 2011	L.5/2011	26 May 2011 (R&O.67/2011)
Civil Partnership (Consequential Amendments) (Jersey) Regulations 2012	R&O.47/2012	2 April 2012
Collective Investment Funds (Amendment and Validation) (Jersey) Law 2012	L.29/2012	23 November 2012
Alternative Investment Funds (Jersey) Regulations 2012	R&O.142/2012	2 April 2013
Financial Regulation (Disclosure of Information) (Amendments) (Jersey) Regulations 2013	R&O.31/2013	13 March 2013
States of Jersey (Transfer of Functions No. 6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013	R&O.107/2013	19 July 2013
Financial Services Ombudsman (Jersey) Law 2014	L.14/2014	25 July 2014
Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 2014	L.40/2014	21 November 2014
Financial Services Commission (Amendment No. 6) (Jersey) Law 2015	L.1/2015	20 March 2015

### Table of Renumbered Provisions

<b>Original</b>	<b>Current</b>
1(1)	1
1(2), (3), (4)	spent, omitted from this revised edition
1A	2
2	3
3	4
4	5
5	6
6	7
(4A)	(5)
(5)	(6)
(6)	(7)
(6A)	(8)
(7)	(9)
(7A)	(10)
(7B)	(11)
(8)	(12)
7	8



<b>Original</b>	<b>Current</b>
8	9
(1A)	(2)
(2)	(3)
(3)	(4)
(4)	(5)
(5)	(6)
(6)	(7)
(7)	(8)
(7A)	(9)
(8)	(10)
9	10
(4)	repealed by L.23/1998
(5)	repealed by L.23/1998
(6)	(4)
(7)	(5)
10	11
11	12
12	13
13	14
(2)(a)(iii)(1)	(2)(a)(iii)(A)
(2)(a)(iii)(2)	(2)(a)(iii)(B)
13A	15
14	16
(1A)	(2)
(2)	(3)
(2A)	(4)
(2B)	(5)
(2C)	(6)
(3)	(7)
(4)	(8)
14A	17
15	18
(1A)	(2)
(1B)	(3)
(2)	(4)
(3)	(5)
(4)	repealed by L.23/1999
(5)	repealed by L.23/1999
16	19
17	20
(1A)	(2)
(2)	(3)
(3)	(4)
18	21

<b>Original</b>	<b>Current</b>
19	22
(4A)	(5)
(4B)	(6)
(4C)	(7)
(5)	(8)
(6)	(9)
(6A)	(10)
(6B)	(11)
(6C)	(12)
(6D)	(13)
(7)	(14)
19A	23
19B	24
19C	25
19D	26
19E	27
19F	28
19G	29
19H	30
19J	31
19K	32
19L	33
20	34
(2A)	(3)
(2B)	(4)
(3)	(5)
(4)	(6)
(5)	(7)
(6)	(8)
(7)	(9)
(8)	(10)
21	35
22	36
22A	37
23	38
24	spent, omitted from this revised edition
25	39

### Table of Endnote References

<sup>1</sup> *This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*

<sup>2</sup> *chapter 13.250*

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- <sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R1093:EN:NOT>
- <sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R1094:EN:NOT>
- <sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R1095:EN:NOT>
- <sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R1092:EN:NOT>
- <sup>7</sup> chapter 13.225
- <sup>8</sup> chapter 13.125
- <sup>9</sup> chapter 08.780.30
- <sup>10</sup> chapter 13.100.60
- <sup>11</sup> chapter 13.100.75
- <sup>12</sup> chapter 13.225
- <sup>13</sup> Article 1(1) amended by L.11/1998, L.23/1998; renumbered as Article 1(1) and amended by L.14/2008; amended by L.4/2009, R&O.47/2012, R&O.31/2013, R&O.107/2013, L.40/2014
- <sup>14</sup> Article 1(2) substituted by L.40/2014
- <sup>15</sup> Article 1(3) added by L.40/2014
- <sup>16</sup> Article 2 inserted by L.23/1998; amended by L.4/2009
- <sup>17</sup> Article 3(2) amended by R&O.8081
- <sup>18</sup> Article 3(3) amended by R&O.8081
- <sup>19</sup> chapter 13.425
- <sup>20</sup> Article 3(4) amended by L.23/1998
- <sup>21</sup> Article 3(7) inserted by L.23/1998
- <sup>22</sup> Article 4(2) amended by L.11/1998
- <sup>23</sup> Article 5(1) amended by L.14/2008
- <sup>24</sup> Tomes I-III, page 232
- <sup>25</sup> chapter 13.125
- <sup>26</sup> chapter 13.475
- <sup>27</sup> chapter 13.370
- <sup>28</sup> chapter 13.500
- <sup>29</sup> chapter 13.780
- <sup>30</sup> Article 5(2) amended by L.30/1991, L.3/1997, L.23/1998, L.14/2008, L.6/2011, L.5/2011
- <sup>31</sup> Article 5(3) amended by L.23/1998
- <sup>32</sup> Article 5(4) amended by L.23/1998
- <sup>33</sup> Article 6 amended by L.11/1998
- <sup>34</sup> Article 6(1) amended by L.37/2007
- <sup>35</sup> Article 6(2) amended by L.14/2008
- <sup>36</sup> Article 6(3) repealed by L.14/2008
- <sup>37</sup> Article 6(4) inserted by L.23/1998
- <sup>38</sup> Article 7(1) amended by L.11/1998
- <sup>39</sup> Article 7(3) amended by L.11/1998
- <sup>40</sup> Article 7(4) amended by L.11/1998
- <sup>41</sup> Article 7(5) inserted by L.23/1998
- <sup>42</sup> chapter 13.075
- <sup>43</sup> chapter 13.225
- <sup>44</sup> chapter 13.425
- <sup>45</sup> chapter 17.245.51
- <sup>46</sup> Article 7(6) substituted by L.14/2008, amended by R&O.142/2012, L.1/2015
- <sup>47</sup> Article 7(6A) inserted by L.14/2008
- <sup>48</sup> Article 7(6B) inserted by L.14/2008
- <sup>49</sup> Article 7(7) amended by L.11/1998, L.23/1998, L.14/2008, L.29/2012
- <sup>50</sup> Article 7(8) inserted by L.23/1998; repealed by L.14/2008
- <sup>51</sup> Article 7(9) repealed by L.14/2008
- <sup>52</sup> Article 7(10) inserted by L.23/1998, amended by L.40/2014
- <sup>53</sup> Article 7(11) inserted by L.23/1998
- <sup>54</sup> Article 7(12) substituted by L.33/2007

Article 8 of the Financial Services Commission (Amendment No. 4) (Jersey) Law 2007, which came into force on 2nd November 2007, states-

**“8 Initial publication of fees**

- (1) The Commission must, before [24th January 2008], publish fees for the purpose of the Laws specified in the Schedule to this Law. (NOTE: the Schedule includes this Law)
- (2) The fees so published –
  - (a) shall be the same fees as those prescribed under those Laws; and
  - (b) shall have effect when this Law comes fully into force.
- (3) On this Law coming fully into force, the fees published under this Article shall be taken to have been published under Article 15(5) of the [Financial Services Commission (Jersey) Law 1998].
- (4) In this Article –
 

“Commission” means the Jersey Financial Services Commission established by the principal Law;

“published”, in respect of fees published in accordance with this Article, means published in a manner likely to bring them to the attention of those affected by the fees.”

- <sup>55</sup> Article 8 substituted by L.14/2008
- <sup>56</sup> L.1/1861 (repealed by L.30/1991 (chapter 13.125))
- <sup>57</sup> chapter 13.125
- <sup>58</sup> chapter 13.500
- <sup>59</sup> chapter 13.475
- <sup>60</sup> Article 8(1) amended by L.6/2011, L.5/2011
- <sup>61</sup> Article 8(6) inserted by L.4/2009
- <sup>62</sup> Article 8A inserted by L.14/2008
- <sup>63</sup> Article 8A(1) amended by L.6/2011, L.5/2011
- <sup>64</sup> chapter 13.250
- <sup>65</sup> Article 8A(2) amended by L.29/2012
- <sup>66</sup> Article 8B inserted by L.14/2008
- <sup>67</sup> Article 8B(7) amended by L.1/2015
- <sup>68</sup> Article 8B(10) amended by L.6/2011, L.5/2011, L.29/2012
- <sup>69</sup> chapter 13.250
- <sup>70</sup> Article 8B(13) substituted by L.29/2012
- <sup>71</sup> Article 8C inserted by L.14/2008
- <sup>72</sup> Article 8D inserted by L.14/2008
- <sup>73</sup> Article 8E inserted by L.14/2008
- <sup>74</sup> Article 8E(1) amended by L.4/2009, L.40/2014
- <sup>75</sup> Article 8E(3) substituted by L.40/2014
- <sup>76</sup> Article 8F inserted by L.14/2008
- <sup>77</sup> Article 9 substituted by L.40/2014
- <sup>78</sup> Article 10(4) amended by L.23/1998
- <sup>79</sup> Article 10(5) amended by L.23/1998
- <sup>80</sup> Article 11(1) amended by L.11/1998
- <sup>81</sup> Article 11(2) amended by L.11/1998
- <sup>82</sup> Article 11(3) amended by L.11/1998
- <sup>83</sup> Article 12 substituted by L.14/2008
- <sup>84</sup> Article 12 renumbered as paragraph (1) by L.4/2009
- <sup>85</sup> Article 12(2) inserted by L.4/2009
- <sup>86</sup> Article 12A inserted by L.14/2008
- <sup>87</sup> Article 12B inserted by L.14/2008
- <sup>88</sup> Article 12B(8) inserted by L.40/2014
- <sup>89</sup> Article 12C inserted by L.14/2008
- <sup>90</sup> Article 12D inserted by L.14/2008
- <sup>91</sup> Article 13 substituted by L.14/2008

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- <sup>92</sup> Article 13(8) inserted by L.4/2009  
<sup>93</sup> Article 13(9) inserted by L.4/2009  
<sup>94</sup> Article 14(1) amended by L.11/1998, L.21/2000  
<sup>95</sup> Article 14(2) amended by L.11/1998, L.14/2008  
<sup>96</sup> Article 15 inserted by L.23/1998  
<sup>97</sup> Article 15(1) amended by L.14/2008, L.1/2015  
<sup>98</sup> Article 15(3) substituted by L.1/2015  
<sup>99</sup> Article 16(1) substituted by L.21/2000  
<sup>100</sup> Article 16(2) inserted by L.21/2000, amended by L.14/2008  
<sup>101</sup> Article 16(3) substituted by L.23/1998, amended by L.40/2014  
<sup>102</sup> Article 16(4) inserted by L.23/1998, amended by L.14/2008  
<sup>103</sup> Article 16(5) inserted by L.23/1998  
<sup>104</sup> Article 16(5A) inserted by L.14/2008  
<sup>105</sup> Article 16(6) inserted by L.23/1998  
<sup>106</sup> Article 16(7) amended by L.23/1998  
<sup>107</sup> Article 16(8) amended by L.23/1998, L.40/2014  
<sup>108</sup> Article 17 inserted by L.23/1998; substituted by L.14/2008  
<sup>109</sup> Article 17(2) amended by L.4/2009, L.1/2015  
<sup>110</sup> Article 17A inserted by L.14/2008  
<sup>111</sup> Article 17B inserted by L.14/2008  
<sup>112</sup> Article 17B(3) amended by L.4/2009  
<sup>113</sup> Article 17C inserted by L.14/2008  
<sup>114</sup> Article 18 amended by L.11/1998  
<sup>115</sup> Article 18(1) substituted by L.14/2008  
<sup>116</sup> Article 18(2) substituted by L.21/2000  
<sup>117</sup> Article 18(3) inserted by L.21/2000  
<sup>118</sup> Article 19 substituted by L.21/2000  
<sup>119</sup> Article 20 heading substituted by L.4/2009  
<sup>120</sup> Article 20(1) amended by L.11/1998  
<sup>121</sup> Article 20(2) repealed by L.33/2007  
<sup>122</sup> Article 20(3) substituted by L.4/2009  
<sup>123</sup> Article 20(4) substituted by L.14/2008  
<sup>124</sup> Article 21 substituted by L.14/2008  
<sup>125</sup> chapter 15.360  
<sup>126</sup> Article 22 amended by L.11/1998  
<sup>127</sup> Article 22(1) amended by L.14/2008  
<sup>128</sup> Article 22(2) substituted by L.14/2008  
<sup>129</sup> Article 22(3) substituted by L.14/2008  
<sup>130</sup> Article 22(4) amended by L.23/1998  
<sup>131</sup> Article 22(5) inserted by L.23/1998  
<sup>132</sup> Article 22(6) inserted by L.23/1998, amended by L.14/2008  
<sup>133</sup> Article 22(7) inserted by L.23/1998  
<sup>134</sup> Article 22(8) amended by L.40/2014  
<sup>135</sup> Article 22(9) amended by L.40/2014  
<sup>136</sup> Article 22(10) inserted by L.23/1998, amended by L.40/2014  
<sup>137</sup> Article 22(11) inserted by L.23/1998  
<sup>138</sup> Article 22(12) inserted by L.23/1998  
<sup>139</sup> Article 22(13) inserted by L.23/1998  
<sup>140</sup> Article 23 inserted by L.23/1998  
<sup>141</sup> Article 23(1) amended by L.40/2014  
<sup>142</sup> Article 23(2) amended by L.40/2014  
<sup>143</sup> Article 24 inserted by L.23/1998  
<sup>144</sup> Article 24(1) substituted by L.40/2014  
<sup>145</sup> Article 24(2) amended by L.40/2014  
<sup>146</sup> Article 24(4) amended by L.40/2014

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- <sup>147</sup>Article 24(5) amended by L.40/2014  
<sup>148</sup>Article 24(7) amended by L.40/2014  
<sup>149</sup>Article 24(8) amended by L.40/2014  
<sup>150</sup>Article 25 substituted by L.4/2002  
<sup>151</sup>Article 25(1) amended by L.14/2008, L.40/2014  
<sup>152</sup>Article 25(6) amended by L.14/2008, L.40/2014  
<sup>153</sup>Article 25(7) amended by L.14/2008  
<sup>154</sup>Article 26 inserted by L.23/1998  
<sup>155</sup>Article 27 inserted by L.23/1998  
<sup>156</sup>Article 27(1) substituted by L.4/2009  
<sup>157</sup>Article 27(2) substituted by L.4/2009  
<sup>158</sup>Article 27(3) repealed by L.4/2009  
<sup>159</sup>Article 28 substituted by L.4/2009  
<sup>160</sup>Article 28(1) amended by R&O.31/2013  
<sup>161</sup>Article 28(1A) inserted by R&O.31/2013  
<sup>162</sup>chapter 13.255  
<sup>163</sup>Article 28(3) added by L.14/2014  
<sup>164</sup>Article 29 inserted by L.23/1998  
<sup>165</sup>Article 29(1) amended by L.14/2008, L.4/2009, R&O.31/2013  
<sup>166</sup>Article 29(2) substituted by L.4/2009  
<sup>167</sup>Article 29(3) substituted by L.4/2009  
<sup>168</sup>Article 29(4) substituted by L.4/2009  
<sup>169</sup>Article 29(5) inserted by L.4/2009  
<sup>170</sup>Article 29(6) inserted by L.4/2009, amended by L.40/2014  
<sup>171</sup>Article 29(7) added by R&O.31/2013  
<sup>172</sup>Article 29(8) added by R&O.31/2013  
<sup>173</sup>Article 29(9) added by R&O.31/2013  
<sup>174</sup>Article 29(10) added by R&O.31/2013  
<sup>175</sup>Article 30 substituted by L.4/2009, amended by R&O.31/2013  
<sup>176</sup>Article 30A inserted by L.4/2009  
<sup>177</sup>Article 31 substituted by L.4/2009, amended by R&O.31/2013  
<sup>178</sup>Article 32 inserted by L.23/1998  
<sup>179</sup>Article 32(1) amended by L.40/2014  
<sup>180</sup>Article 32(2) amended by L.14/2008  
<sup>181</sup>Article 32(3) amended by L.14/2008, L.40/2014  
<sup>182</sup>Article 32(4) amended by L.14/2008  
<sup>183</sup>Article 32(6) substituted by L.14/2008  
<sup>184</sup>Article 33 inserted by L.23/1998  
heading amended by L.14/2008  
<sup>185</sup>Article 33(1) substituted by L.14/2008  
<sup>186</sup>Article 34 amended by L.11/1998, heading amended by L.40/2014  
<sup>187</sup>Article 34(1) repealed by L.14/2008  
<sup>188</sup>Article 34(2) repealed by L.14/2008  
<sup>189</sup>Article 34(3) inserted by L.23/1998; repealed by L.14/2008  
<sup>190</sup>Article 34(4) inserted by L.23/1998; repealed by L.14/2008  
<sup>191</sup>Article 34(5) amended by L.14/2008, L.40/2014  
<sup>192</sup>Article 34(6) amended by L.14/2008, L.40/2014  
<sup>193</sup>Article 34(7) amended by L.14/2008  
<sup>194</sup>Article 34(8) amended by L.14/2008, L.4/2009, L.40/2014  
<sup>195</sup>Article 34(9) amended by L.14/2008, L.40/2014  
<sup>196</sup>Article 34(10) amended by L.40/2014  
<sup>197</sup>Article 34(11) substituted by L.40/2014  
<sup>198</sup>Article 34(12) substituted by L.40/2014  
<sup>199</sup>Article 34(13) inserted by L.4/2009, amended by L.40/2014  
<sup>200</sup>Article 34(14) inserted by L.4/2009  
<sup>201</sup>Article 34(15) inserted by L.4/2009, amended by L.40/2014
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- <sup>202</sup> *Article 34(16)* inserted by L.4/2009  
<sup>203</sup> *Article 34(17)* inserted by L.4/2009  
<sup>204</sup> *Article 34A* inserted by L.14/2008  
<sup>205</sup> *Article 36* substituted by L.11/1998  
<sup>206</sup> *Article 37* repealed by L.33/2007  
<sup>207</sup> *Article 38* deleted by L.40/2014  
<sup>208</sup> *Article 38A* inserted by L.14/2008  
<sup>209</sup> correction March 2010: spelling error corrected: “depository” changed to “depository”